THIS IS A CONTINUATION OF THE AUGUST 1, 1988 ADMINISTRATIVE REGISTER!!!

Due to the number of regulations filed for this register,
the pages had to be stapled in two groups.

THIS IS GROUP 2 TO THE REGISTER!!!

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ADD THESE TO THE FRONT PART OF THE AUGUST REGISTER!!!

3. Minimum or uniform standards contained in the federal mandate. 30 CFR 800 sets forth the minimum requirements for filing and maintaining bonds and insurance for surface coal mining and reclamation operations under regulatory programs in accordance with 30 U.S.C. 1201 et seq., P.L. 95-87.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 10:040. Procedures, criteria and schedule for release or credit of performance bond.

RELATES TO: KRS 350.060, 350.064, 350.093, 350.110, 350.113, 350.151, 350.465
PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.093, 350.151, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to set out by regulation procedures and criteria for the release of performance bond. This regulation specifies the procedures, criteria, and schedule, including reclamation phases, for the release and partial release of liability under performance bonds. This regulation also sets forth certain notice and hearing requirements pertinent to bond release.

Section 1. Procedures for Release of Performance Bond. (1) Application for bond release. The permittee or any person authorized to act on his or her behalf may or the cabinet shall, initiate [file] an application [with the cabinet] for release of all or part of the performance bond liability applicable to a particular permit or increment after all reclamation, restoration and abatement work in a reclamation phase as defined in Section 2(4) of this regulation has been completed on the entire permit area or increment. [The procedures of this section also apply to requests made pursuant to 405 KAR 10:020, Section 4(3).]

(a) Bond release applications may only be filed at times or seasons that allow the cabinet to evaluate properly the reclamation operations alleged to have been completed.

(b) Within thirty (30) days of the initiation of any bond release request, the permittee shall submit copies of letters which it has sent to adjoining property owners, surface owners (their agents and lessees), local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond. For bond releases initiated by the cabinet, the cabinet shall undertake the notification requirements set forth in this subsection. [The application for bond release shall include copies of notices sent to adjoining property owners, surface owners, their agents and lessees, local government bodies, planning agencies, and sewage and water treatment facilities or water companies in the locality of the permit area, notifying them of the permittee's intention to seek release of performance bond(s).] The notices shall also state that these individuals and their representatives may participate in a [the] bond release inspection by contacting the cabinet. These notices shall be sent at the time [before] the permittee initiates [files] the application for release.

(c) Upon the filing of an application for bond release by a permittee, or the initiation of such release by the cabinet, the cabinet shall notify, by certified mail, within thirty (30) days of such filing or initiation, the municipality or county judge-executive where the surface coal mining operation is located.

(d) [(c)] Within thirty (30) days after advertising an application for bond release as per the requirements of subsection (2) of this section, [filing the application for bond release] the permittee, or the cabinet if it elected to advertise as per subsection (2) of this section, shall submit proof of said publication. Proof of publication shall be placed, by the cabinet, with the bond release application. [of the advertisement required by subsection (2) of this section.] Such proof of publication shall be considered part of the bond release application [and the application shall not be considered complete until such proof of publication is submitted to the cabinet].

(2) Public notice. At the time of initiating [filing] an application for bond release under this section, the permittee shall, and the cabinet may at permittee expense, advertise the filing of the application in the newspaper of largest bona fide circulation according to the definition in KRS 424.110 to 424.120 in the county or counties in which the permit area is located. Said advertisement ~~must~~ shall begin within sixty (60) days of the initiation of any application for bond release whether said bond release application is initiated by the permittee or the cabinet. Should the cabinet initiate a bond release pursuant to this subsection but choose not to advertise the release pursuant to this section, and the permittee does not advertise the request for the release within the time schedules established by this subsection, the bond release application shall be denied. The advertisement shall[:]

[(a)] be placed in the newspaper at least once a week for four (4) consecutive weeks. The advertisement shall contain: [;]

(a) [(b) Show] The name of the permittee, the permit number and the [including the number and] date of issuance or renewal of the permit or increment;

(b) [(c) Show] The precise location and the number of acres of the lands subject to the application;

(c) [(d) Show] The type and total amount of bond filed [in effect] for the permit area or increment and the reclamation phase [amount] for which release is sought;

(d) The type and approximate dates of reclamation work performed;

(e) A description of the results achieved as they relate to the permittee's approved

reclamation plan; ~~and~~

[(e) Summarize the reclamation, restoration or abatement work done, including, but not limited to, backstowing or mine sealing, if applicable, and give the dates of completion of that work;]

[(f) Describe the reclamation results achieved, as they relate to compliance with KRS Chapter 350, Title 405, Chapters 7 through 24 and the approved mining and reclamation plan and permit; and]

(f) [(g) State] A statement that written comments, objections, and requests for a public hearing [pursuant to 405 KAR 7:090] may be submitted to the cabinet, provide the appropriate address of the cabinet, and the closing date by which comments, objections, and requests must be received.

(g) A statement that a public hearing has been scheduled, including the date and location of the hearing; and

(h) A statement that the schedule public hearing shall be cancelled if the cabinet does not receive a request for the public hearing by the closing date for requests for hearing.

(3) Objections, comments or requests for public hearing prior to bond release. [. Written objections to the proposed bond release and requests for a public hearing may be filed with the cabinet by any person having a valid legal interest which might be adversely affected by release of the bond, and by the responsible officer or head of any federal, state, or local government agency. Objections must be filed within thirty (30) days following the last advertisement of the filing of the application.]

(a) Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond and, if desired, file a request for a public hearing with the cabinet within thirty (30) days after the last publication of the notice required by ~~Section~~ subsection (2) of this ~~regulation~~ section.

(b) The cabinet shall schedule a public hearing for each request for bond release, such hearing to be scheduled within five (5) working days of the end of the public comment period. If the cabinet does not receive a request for a public hearing by the end of the public comment period, the cabinet shall cancel the public hearing. The public hearing shall be held in the locality of the surface coal mining operation for which bond release is sought. The person requesting the release shall contact the cabinet prior to beginning advertisements under ~~Section~~ subsection (2) to obtain the date and location of the public hearing in order to include this information in the advertisement.

(c) The hearing under paragraph (b) of this subsection shall be legislative in nature and the provisions of 405 KAR 7:090 shall not apply. The cabinet shall have the authority to adminster oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the cabinet.

(d) Without prejudice to the right of an objector or the applicant and upon agreement of all parties, the cabinet may hold an informal conference in accordance with the procedures in 405 KAR 8:010, Section 11 for permit conferences to resolve such written objections in lieu of the public hearing under paragraph (b) of this subsection. The informal conference shall be held at the same time and location as was scheduled for the public hearing. The cabinet shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The cabinet shall also furnish all parties of the informal conference with a written finding of the cabinet on the informal conference, and the reasons for said finding.

(4) Inspection and evaluation. The cabinet shall inspect and evaluate the reclamation work involved within thirty (30) days after initiation of a bond release request by the permittee, or any person authorized to act on his or her behalf, [receiving a completed application for bond release,] or as soon thereafter as weather conditions permit. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee known to the cabinet shall be given notice of such inspection and may participate with the cabinet in making the bond release inspection. The cabinet may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

(5)(a) Notice of decision. The cabinet shall as described in paragraph (b) of this subsection provide notification in writing of its decision to release or not to release all or part of the performance bond within five (5) days following receipt of proof of public advertisement as required in this section, or within five (5) days of the end of the thirty (30) day public comment period provided for in subsection (3) of this section, whichever is later. Provided, however, that if an informal conference or public hearing has been requested pursuant to subsection (3) of this section, the cabinet shall provide its notice of decision within thirty (30) days following said informal conference or public hearing. [or deposit within sixty (60) days from the receipt of the completed application, or within thirty (30) days from the close of the public comment period if comments were received, whichever occurs last.]

(b) The notice of the decision shall state the reasons for the decision, recommend any corrective actions necessary to secure the release, and notify the permittee, the surety, any person with an interest in collateral who has previously requested such notification in writing, persons who filed objections in writing, and objectors who were a party to the informal conference or public hearing [all

interested parties, and by certified mail the County Judge-Executive,] of their right to request, within thirty (30) days of notice, a formal [public] hearing as provided for by subsection (6) of this section. Where the decision is to release all or part of the performance bond, the notice shall state that the release shall occur fourteen (14) days after the date of the decision unless temporary relief is granted under 405 KAR 7:090, Section 8.

(c) In no event shall the cabinet disapprove an application for reclamation phase I or II release of a surety bond or a bond secured by a letter of credit solely upon the permittee's failure to pay penalties or fines, if applicable reclamation requirements for the requested release have been fully met.

(6) Requests for formal hearing after bond release or denial. Any person aggrieved by the decision of the cabinet to approve or disapprove a bond release application, in whole or in part, shall have the right to request a formal hearing pursuant to 405 KAR 7:090. When the cabinet has decided to release all or part of the performance bond, the release shall not occur until fourteen (14) days after the date of the decision. At the end of that fourteen (14) days, the cabinet shall effect the release unless temporary relief is granted under 405 KAR 7:090, Section 8. [Hearing. In the event that a public hearing has been requested pursuant to subsections (3) or (5)(b) of this section, the cabinet shall inform the permittee, local government, and any objecting party of the time, date, and place of the hearing and publish notice of the hearing in the newspaper of largest bona fide circulation according to the definition in KRS 424.110 to 424.120 in the county in which the permit area is located once a week for two (2) consecutive weeks before the hearing. The hearing shall be held pursuant to 405 KAR 7:090 within sixty (60) days of the cabinet's decision, in the locality of the permit area, or the central office of the cabinet in Frankfort, Kentucky, at the option of the objector.]

Section 2. Criteria and Schedule for Release of Performance Bond. (1) Monies pledged [Liability] under performance bonds shall not be eligible for release until the permittee has met the requirements of the applicable reclamation phase as defined in subsection (4) of this section. The cabinet may release portions of the monies pledged [liability] under performance bonds applicable to a permit or increment following completion of reclamation phases on the entire permit area or entire increment.

(2) The maximum portion of the monies pledged [liability] under performance bonds applicable to a permit area which may be released shall be calculated on the following basis:

(a) Release an amount not to exceed sixty (60) percent of the total original bond amount on the permit area, section, or increment upon completion of phase I reclamation.

(b) Release an additional amount not to exceed twenty-five (25) percent of the total original bond amount on the permit area or increment upon completion of phase II reclamation, but in all cases the amount remaining shall be sufficient to reestablish vegetation and reconstruct any drainage structures.

(c) Release the remaining portion of the total performance bond on an entire permit area or increment after standards of phase III reclamation have been attained on the entire permit area or increment and final inspection and procedures of Section 1 of this regulation have been satisfied. After the final bond release for phase III reclamation on an increment, the increment shall be deleted from the permit area.

(3) The cabinet shall not release any monies pledged [liability] under performance bonds applicable to a permit if such release would reduce the total remaining monies pledged [liability] under performance bonds to an amount less than that necessary for the cabinet to complete the approved reclamation plan, achieve compliance with the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 or the permit, and abate any significant environmental harm to air, water or land resources or danger to the public health and safety which might occur prior to the release of all performance bond liability for the permit area. [Where the permit includes an alternative postmining land use plan approved pursuant to 405 KAR 16:210 or 405 KAR 18:220, the cabinet shall also retain sufficient liability for the cabinet to complete any additional work which would be required to achieve compliance with the general standards for revegetation in 405 KAR 16:200, Section 6(2)(c) or 405 KAR 18:200, Section 6(2)(c) in the event the permittee fails to implement the approved alternative postmining land use plan within the two (2) years required by 405 KAR 16:200, Section 6(2)(c)2 or 405 KAR 18:200, Section 6(2)(c)2.]

(4) Reclamation phases are defined as follows:

(a) Reclamation phase I shall be deemed to have been completed on the entire permit area or increment when the permittee completes backfilling, regrading, topsoil replacement, and drainage control including soil preparation, seeding, planting and mulching in accordance with the approved reclamation plan and a planting report for the area has been submitted to the cabinet;

(b) Reclamation phase II shall be deemed to have been completed on the entire permit area or increment when:

1. Revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met;

2. The lands are not contributing suspended solids to stream flow or run off outside the permit area or increment in excess of the requirements of KRS 350.420, Title 405, Chapters 16 or 18, or the permit;

3. With respect to prime farmlands, soil productivity has been restored as required by 405 KAR 20:040, Section 6 [1(3)] and the plan approved under 405 KAR 8:050, Section 3; and

4. The provisions of a plan approved by the cabinet for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the cabinet.

(c) Reclamation phase III will be deemed to have been completed on the entire permit area or increment when the permittee has successfully completed all surface coal mining and reclamation operations in accordance with the approved reclamation plan, such that the land is capable of supporting the postmining land use approved pursuant to 405 KAR 16:210 or 405 KAR 18:220; and has achieved compliance with the requirements of KRS Chapter 350, Title 405,

Chapters 7 through 24, and the permit; and the applicable liability period under 405 KAR 10:020, Section 3(2) has expired.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk
(1) Type and number of entities affected: This regulation governs the criteria and procedures for performance bond release for permanent program surface coal mining and reclamation operations. There were 3,257 such permits as of June 30, 1987. During fiscal year 1987 the cabinet received 416 new permit applications, and future permitting activities are anticipated to remain at about this same level. This regulation also affects landowners and other members of the general public in the coalfield regions that may be adversely affected by surface coal mining and reclamation operations and surety companies and other financial institutions providing bond. These amendments modify the procedures for releasing bonds pursuant to changes to state law and federal regulations.
(a) Direct and indirect costs or savings to those affected:
1. First year: An undeterminable indirect savings will occur for the coal industry and surety companies and other financial institutions providing bond due to the fact that the bond release procedure has been shortened. Therefore there will be an ability to use released funds sooner for other operations.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: The information required for the advertisement placed by an operator has been simplified somewhat with respect to describing reclamation work performed.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Savings to the cabinet will result from the new abilty of the cabinet to initiate bond releases where the operator has failed to do so or has gone out of business. By releasing such bonds, the affected mines can be finally closed out and inspections by the cabinet ceased.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: There will be some additional paperwork involved due to the inclusion of a legislative public hearing in the bond release process.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Two alternatives for scheduling the public hearing were considered: 1) automatic scheduling and 2) schedule only upon request. The automatic scheduling approach was chosen because it results in a shorter time frame for arriving at a final decision on bond releases.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Federal law and regulations and state law provide the same bond release criteria and release procedures to all surface coal mining and reclamation operations.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 800.40

2. State compliance standards. Procedures for processing a bond release application are established including: advertising the intent to seek release, providing a public comment period and opportunity for a legislative public hearing, inspections of the mine by the cabinet, time frames for cabinet decisions on the requested release and procedures for formal hearings. Procedures for bond releases initiated by the cabinet are also included.

3. Minimum or uniform standards contained in the federal mandate. Procedures for processing a bond release application are established including: advertising the intent to seek release, providing a public comment period and opportunity for a legislative public hearing, inspections of the mine by the cabinet, and time frames for regulatory authority decisions on the requested release.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The time frame for public hearings and decisions by the cabinet have been modified to provide for a more streamlined, faster process. There are no stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The faster procedure has been designed to protect the rights of all parties and maintain due process, while achieving the benefits or more timely bond releases.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 10:050. Bond forfeiture.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.110, 350.130, 350.151, 350.465
PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to regulate surface coal mining and reclamation operations in a manner as to insure that satisfactory reclamation is accomplished. This regulation sets forth the procedures and criteria by means of which a bond may be forfeited to the cabinet. This regulation sets forth that certain violations of KRS Chapter 350 and regulations promulgated pursuant to that chapter may cause a bond to be forfeited. This regulation sets forth that a hearing may be requested before such forfeiture can be effected. This regulation also specifies a method to determine the amount of bond forfeiture.

Section 1. General. (1) The cabinet shall forfeit all of the remaining bond amount for any permit or increment pursuant to the procedures and criteria of this regulation.

(2) The cabinet may withhold forfeiture if the permittee or the surety agrees to a compliance schedule to correct the violations of the permit or bond conditions.

(3) The cabinet shall [may] withhold forfeiture and allow the surety or other financial institution providing bond to complete the reclamation plan if the surety or other financial institution can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the postmining land use approved by the cabinet, and will undertake to do so within a reasonable time frame and agrees to a compliance schedule. Neither the surety company nor other financial institution shall employ anyone to perform said measures who has been barred from mining pursuant to the provisions of KRS Chapter 350.

Section 2. Procedures. (1) In the event forfeiture of the bond is required by Section 3 of this regulation, the cabinet shall:

(a) Send written notification by certified mail, return receipt requested, to the permittee, and to the surety on the bond, if applicable, of the cabinet's determination to initiate forfeiture of the bond and the reasons for the forfeiture;

(b) Advise the permittee and surety, if applicable, of their right to challenge the determination pursuant to 405 KAR 7:090; and

(c) If no hearing is requested within thirty (30) days following notification and the bond proceeds are not received, the secretary shall enter a final order of forfeiture and the cabinet shall proceed in an action for collection on the bond.

(2) The cabinet may, as an alternative to following the procedures of subsection (1) of this section, initiate formal hearing procedures concerning forfeiture of the bond alone or in conjunction with the cabinet's action for other appropriate remedies against the permittee pursuant to 405 KAR 7:090.

(3) The cabinet shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area or increment on which bond coverage applied, and to cover associated administrative expenses. Such funds shall be deposited in an appropriate account for the payment of such costs. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or set-off such proceeds under state law.

(4) In the event the amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The cabinet may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

Section 3. Criteria for Forfeiture. (1) A bond for a permit area or increment shall be forfeited, if the cabinet finds that:

(a) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;

(b) The permittee has failed to conduct the surface mining and reclamation operations in accordance with KRS Chapter 350, the conditions of the permit or Title 405, Chapters 7 through 24 within the time required[, and the cabinet has determined that it is necessary, in order to fulfill the requirements of the permit, Title 405, Chapters 7 through 24 and KRS Chapter 350, to have someone other than the permittee correct or complete reclamation];

(c) The permit for the area or increment under bond has been revoked or the operation terminated, unless the permittee, [or] surety, or other financial institution providing bond assumes liability pursuant to an agreement for the completion of reclamation [to the satisfaction of the cabinet for completion of the reclamation work and is, in the opinion of the cabinet, diligently and satisfactorily performing such work]; or

(d) The permittee, [or] surety, or other financial institution providing bond has failed to comply with a compliance schedule approved pursuant to Section 1(2) or (3) of this regulation.

(2) A bond may be forfeited if the cabinet finds that:

(a)1. The permittee has become insolvent[, been adjudicated a bankrupt, filed a petition in bankruptcy or for a receiver, or had a receiver appointed by any court]; or

2. A creditor of the permittee has attached or executed judgment against the permittee's equipment, materials, or facilities, at the permit area; and

(b) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with KRS Chapter 350, Title 405, Chapters 7 through 24, and the permit.

(3) The cabinet may forfeit a bond solely upon the permittee's failure to pay penalties or fines (where all reclamation requirements have been fully met) and retain the bond proceeds, or portion thereof as necessary to offset the penalty of fine owed (including administrative costs incurred by the cabinet): but the cabinet shall forfeit a bond under this circumstance only after the five (5) year liability period has expired. However, where a forfeiture of a surety bond or a bond secured by a letter of credit under this circumstance has occurred, the cabinet shall not retain the surety bond or bond secured by letter of credit or any proceeds thereof and the permittee shall continue to be responsible for payment of the penalties or fines as well as administrative costs incurred by the cabinet.

Section 4. Forfeiture Amount. The cabinet shall forfeit the entire amount of the bond for the permit area or increment.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This regulation governs forfeiture of bonds for surface coal mining operations which becomes necessary when there has been a failure to reclaim or comply with the law. During fiscal year 1987 only 14 forfeiture proceedings where initiated on permanent program surface coal mining operations. Surety companies and other financial institutions are affected by these amendments. These amendments are being made in response to changes in the state law and federal regulations.

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

1. First year: Savings to surety companies and other financial institutions will be achieved since under certain conditions, they will have the right to complete the reclamation plan to avoid a forfeiture. Further it has been made clear the penalties and fines owed by the operator cannot be paid out of surety bond funds or letters of credit where a forfeiture has occurred solely for failure to pay penalties or fines. Additional costs will be incurred by an operator who has had a bond forfeited and the bond amount was insufficient to cover the cost of reclamation since the operator is now made liable for the remaining cost.

2. Continuing costs or savings: Same as first year.

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

(b) Reporting and paperwork requirements: These amendments have no effect on reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: 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: No alternatives were considered since these changes are mandated either by federal regulation or state law.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal law and regulations and state law mandate the same bond forfeiture procedures and criteria for all surface coal mining operations.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 800.50

2. State compliance standards. These amendments provide that a surety company or other financial institution shall have the right to complete the reclamation plan to avoid a forfeiture under certain conditions. A new provision has been added to make the coal

operator responsible for remaining reclamation costs where the forfeited bond amount is insufficient to pay for the reclamation. A provision has been added to state that penalties or fines owed by the operator shall not be paid from surety bond funds or letters of credit where a forfeiture has occurred solely for failure to pay penalties or fines.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations provide that the coal operator is responsible for remaining reclamation costs when the forfeited bond amount is insufficient to pay for the reclamation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no stricter requirements. The difference is that under state regulation and law, surety companies and other financial institutions providing bond have the right to complete the reclamation plan under certain circumstances.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The difference between the federal regulation and the state regulation are directly from state law.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 16:010. General provisions.

RELATES TO: KRS 350.020, 350.090, 350.093, 350.151, 350.405, 350.410, 350.440, 350.445, 350.450, 350.465
PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 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 contains general performance standards for maximizing coal recovery, protection of underground mining, prevention and correction of landslides, temporary cessation of operations, and permanent abandonment of operations.

Section 1. Applicability. The provisions of this chapter are applicable to all surface mining activities conducted under 405 KAR Chapters 7 through 24. The provisions of this chapter also apply to those special categories of surface mining activities for which performance standards are set forth under 405 KAR 20:030 through 405 KAR 20:080 except to the extent that a provision of those regulations specifically exempts a particular category from a particular requirement of this chapter.

Section 2. Coal Recovery. Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

Section 3. Protection of Underground Mining. No surface mining activity shall be conducted within 500 feet of any point of either an active or abandoned underground mine, unless:
(1) If any of the workings of the underground mine are active, the nature, timing, and sequence of the surface mining activity are jointly approved by the cabinet, the MSHA, and the Kentucky Department of Mines and Minerals; and
(2) For both active and abandoned underground mines, the surface mining activity results in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

Section 4. Slide and Erosion Barriers. An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for a minimum distance of fifteen (15) feet or greater distance as the cabinet may determine is necessary to assure stability. The barrier shall be retained in place to prevent slides and erosion.

Section 5. Slides. At any time a slide occurs which may have a potential adverse effect on property, health, safety, or the environment, the person who conducts the surface mining activities shall notify the cabinet by the fastest available means and comply with any remedial measures required by the cabinet.

Section 6. Permanent Abandonment of Operations. (1) Notice required. <u>On or before the date of</u> [Not less than thirty (30) days prior to] permanent abandonment of operations, the permittee shall provide written notice to the cabinet that such abandonment is intended.
(2) Prior to permanent abandonment, and prior to removal of necessary equipment from the site, all affected areas shall be closed, backfilled, and otherwise permanently reclaimed in accordance with the requirements of KRS Chapter 350, the regulations of this Title, and the permit.
(3) All equipment, underground openings, structures, or other facilities not required for monitoring shall be removed and the affected areas reclaimed unless the cabinet approves the retention of such equipment, openings, structures, or other facilities as compatible with the postmining land use or as beneficial to environmental monitoring.

Section 7. Temporary Cessation of Operations. (1) Notice required. [Not less than three (3) days] Prior to a temporary cessation of operations which the permittee intends to last for thirty (30) days or more, or as soon as it is known to the permittee that an existing temporary cessation will last beyond thirty (30) days, the permittee shall provide written notice to the cabinet that such temporary cessation is anticipated. The notice shall state to what extent equipment will be removed from the site during the temporary cessation, and shall state

the approximate date on which the permittee intends that operations will be resumed.

(2) Temporary cessation shall not relieve a permittee of the obligation to comply with 405 KAR 16:070, Section 1(1)(g) and the surface and groundwater monitoring requirements of 405 KAR 16:110, and the obligation to comply with all applicable conditions of the permit during the cessation.

(3) During temporary cessations, equipment and facilities necessary to environmental monitoring or to compliance with performance standards shall be made secure to the extent practicable.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment relates to the time constraints under which a permittee must notify the cabinet of plans to permanently or temporarily abandon an surface mine. In that respect, this amendment will affect all permittees of surface mines operating under permanent program requirements. As of June 30, 1987, there were 1,487 surface mines operating under the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, preparation plants, etc.), a portion of which were regulated under surface mining standards. During Fiscal year 1987, the cabinet received 416 new permit applications, and future permitting activities are anticipated to remain at about this same level.

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

1. First year: This amendment should result in neither savings nor additional costs to the affected entities.

2. Continuing costs or savings: This amendment should result in neither savings nor additional costs to the affected entities.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and this amendment will have no effect on competition.

(b) Reporting and paperwork requirements: This amendment relaxes the time frames under which a permittee must file a notice of mine-site abandonment. The material to be reported remains the same, but the time frames have been loosened.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment will neither require the cabinet to expend more moneys nor cause the cabinet financial savings.

2. Continuing costs or savings: This amendment will neither require the cabinet to expend more moneys nor cause the cabinet financial savings.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease cabinet costs.

(b) Reporting and paperwork requirements: This amendment does not impose any additional reporting or paperwork requirements on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to the promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate this amendment.

(a) Necessity of proposed regulation if in conflict: Because no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Because no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 816.131 and 816.132, established by federal register 44 FR 14902 et seq., published on March 13, 1979.

2. State compliance standards. While current 405 KAR 16:010 requires the filing of a notice not less than 30 days prior to permanent abandonment of a mine, and 3 days notice prior to temporary abandonment, this amendment will allow permittees to file such notices anytime on or before the date of permanent or temporary abandonment.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate does not specify that the abandonment notice has to be filed a certain number of days prior to actural abandonment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This amendment will not impose stricter requirements or additional or different responsbilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose stricter standards or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 16:070. Water quality standards and effluent limitations.

RELATES TO: KRS 350.020, 350.090, 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 identifies water quality standards and effluent limitations which must be met, identifies the waters to which they apply and the periods of time in which they apply, requires water treatment for sediment control, and provides certain exemptions.

Section 1. Water Quality Standards and Effluent Limitations. (1)(a) All surface drainage from disturbed areas shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area.

(b) Sedimentation ponds and other treatment facilities shall be properly maintained and shall not be removed until all disturbed areas in the drainage area above the facility have been backfilled, graded and revegetated in accordance with this chapter and:

1. The vegetation has successfully survived two (2) years after the last augmented seeding [growing seasons];

2. The vegetation meets the ground cover standards of 405 KAR 16:200; and

3. The permittee has demonstrated to the satisfaction of the cabinet that retention of the pond or other treatment facility is not necessary in order to meet the requirements of paragraph (g) of this subsection.

(c) The cabinet may grant exemptions from these requirements only when:

1. The disturbed drainage area is small; and

2. The permittee demonstrates that sedimentation ponds and treatment facilities are not necessary for drainage from the disturbed drainage areas to meet the requirements of paragraph (g) of this subsection.

(d) For the purposes of this regulation, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this Title and the upstream area is not otherwise disturbed by the person who conducts the surface mining activities.

(e) Sedimentation ponds required by this section shall be constructed in accordance with 405 KAR 16:090 and 405 KAR 16:100, in appropriate locations before beginning any surface mining activities in the drainage area to be affected.

(f) Where sedimentation ponds are located so as to receive drainage both from disturbed areas and from other areas not disturbed by current surface coal mining and reclamation operations, the mixed drainage shall meet the requirements of paragraph (g) of this subsection, when the mixed drainage leaves the permit area.

(g) Discharges of water from areas disturbed by surface mining activities shall at all times be in compliance with all applicable federal and state water quality standards and either: [including]

1. If the operation does not have a KPDES permit, the effluent limitations guidelines for coal mining promulgated by the U.S. EPA in 40 CFR 434; or

2. The effluent limitations established by the KPDES permit for the operation.

(2) Adequate facilities, in addition to sedimentation ponds, shall be installed, operated, and maintained to treat any water discharged from disturbed areas when necessary to ensure that the discharge complies with all federal and state laws and regulations and the limitations of this regulation. Except where a lower pH is authorized by the KPDES permit for the operation, if the pH of water to be discharged from the disturbed area is less than six (6.0), a neutralization process approved by the cabinet shall be installed, operated, and maintained.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments

received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect permittees of surface mines operating under permanent program requirements. As of June 30, 1987, there were 1,487 surface mines operating under the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, preparation plants, etc.), a portion of which were regulated under surface mining standards. During Fiscal year 1987, the cabinet received 416 new permit applications, and future permitting activities are anticipated to remain at about this same level.

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

1. First year: The revisions to Section 1(1)(b)1 will require that sedimentation ponds be retained for a longer period after mining that might be necessary under current requirements. The maintenance needs and water monitoring requirements of these ponds will result in additional costs to some permittees. The chage in Section 1(1)(e) is purely clarification, and will neither save nor cost additional moneys. Revisions to Section 1(1)(g) and Section 2 will allow the cabinet to accept effluent limitations outside of the range that is currently permissible. This change has little effect now, but will cause substantial savings to some permittees in the future. These future benefits will be achieved when effluent relaxations for remining operations become a reality under the recently adopted Rahall Amendment to the Clean Water Act. Please note, however, that depending on the speed at which the Rahall Amendment is implemented, these savings may not become a reality during the first year of this amendment.

2. Continuing costs or savings: The cost and savings existing the first year will continue for subsequent years. However, the cabinet anticipates that in subsequent years more operations will be able to take advantage of the relaxations in effluent limitations emplaced through the Rahall Amendment.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The reduced effluent limitations forthcoming under the Rahall amendment will make the remining of abandoned mine lands a more attractive proposition. This will increase the quantity of "remined" coal in the market and make remining operations more competitive with the more traditional mining of undistrubed areas.

(b) Reporting and paperwork requirements: The cabinet anticipates that permit applicants will need to provide additional documentation to the Kentucky Division of Water in order to take advantage of Rahall's effluent relaxations. The exact reporting and paperwork requirements this would bring about are beyond the scope of this rulemaking.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional resources will probably be necessary in order to process effluent variances under the Rahall amendment; however, the scope of these additional resources is unknown at present.

2. Continuing costs or savings: Additional resources will probably be necessary in order to process effluent variances under the Rahall amendment; however, the scope of these additional resources is unknown at present.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs to the cabinet.

(b) Reporting and paperwork requirements: Additional paperwork may be necessary in processing effluent variances under the Rahall Amendment.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to the promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 817.46(b)(5), as revised by federal register 48 FR 44032 et seq., published September 26 1983; 30 CFR 816.49(a), as revised by federal register 48 FR 43994 et seq., published September 26, 1983; and 30 CFR 816.42, as revised by federal register 48 FR 43955 et seq., published September 26, 1983.

2. State compliance standards. The proposed amendment will impose three requirements: 1) that sedimentation ponds comply with the requirements for permanent and temporary impoundments, 2) that sedimentation ponds remain in place until vegetation on the reclaimed area has successfully survived for two years after the last augmented seeding, and 3) that discharges of water from surface mining disturbances comply with the effluent limitations established in the KPDES permit, if

the operation does have a KPDES permit, and comply with the EPA requirements of 40 CFR 434 if the operation does not have a KPDES permit.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires the following: 1) that any impoundment comply with the requirements for permanent and temporary impoundments, 2) that sedimentation ponds remain in place until vegetation on the reclaimed area has successfully survived for two years after the last augmented seeding, and 3) that discharges of water from surface mining disturbances comply with state and federal water quality laws and regulations and with the EPA effluent limitations set forth in 40 CFR Part 434.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This amendment will not impose stricter requirements or additional or different responsbilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose stricter standards or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

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 groundwater 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 stream flow and to run off 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 protection [linings] shall be used to prevent erosion of the ditch. The following criteria shall [is to] be used unless the cabinet specifies otherwise:

1. Except when located in solid rock or when riprap or other nonerodible materials are used, [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 or other nonerodible materials shall be used when a diversion ditch is not located in solid rock and [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 riprap 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 protected [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 run-off 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 run-off 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 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, 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 an 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 that became effective on February 4, 1986 shall apply to permits issued on or after July 1, 1986. Permittees conducting surface coal mining and reclamation operations under permits issued before that date shall comply with the requirements which preceded the 1986 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 May 5, 1986 [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.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments

received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect permittees of surface mines operating under permanent program requirements. As of June 30, 1987, there were 1,487 surface mines operating under the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, preparation plants, etc.), a portion of which were regulated under surface mining standards. During Fiscal Year 1987, the cabinet receivd 416 new permit applications, and future permitting activities are anticipated to remain at about this same level. The amendment revises language to clarify the cabinet's interpretation of current regulatory provisions. More substantively, the amendment adds flexibility to the standards for seletction of ditch lining material (riprap, etc.). Some permittees will take advantage of the added flexibility while others will not. Therefore, the amendment will actually affect only a portion of the entities identified above.

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

1. First year: For situations in which current 405 KAR 16:080 requires that diversion ditches be lined with riprap, the proposed amendment will allow for the use of either riprap or other nonerodible material. Under this change, permittees may be able to select materials more economical that riprap for use as ditch lining. If appropriate materials less expensive than riprap are available, the permittee will be able to use these at a savings to the operation.

2. Continuing costs or savings: The savings established during the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and the amendment will have no effect on competition.

(b) Reporting and paperwork requirements: This amendment will impose no additional reporting or paperwork requirements on the affected entities.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment will have no cost or savings impact on the cabinet.

2. Continuing costs or savings: This amendment will have no cost or savings impact on the cabinet.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease the cabinet's costs.

(b) Reporting and paperwork requirements: This amendment will not impose any additional reporting or paperwork requirements on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: The amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to implementation of the changes other than by promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 816.43, as revised by federal register 48 FR 43955 et seq., published September 26, 1983.

2. State compliance standards. This amendment allows for the use of riprap or other nonerodible material to line diversion ditches that are not in solid rock and that have a peak design velocity of 5 feet per second or greater.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that diversion ditches comply with any design criteria specified by the regulatory authority to meet the requirements of 30 CFR 816.43. 30 CFR 816.43 establishes the following protection standards that diversion ditches must meet: diversions must be stable; they must minimize adverse impacts to the hydrologic balance within the permit and adjacent area; they must prevent material damage outside the permit area; they must assure the safety of the public; and they must prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposes amendment complies with the direction of the federal mandate. To meet the federally mandated protection requirements, existing 405 KAR 16:080 sets forth design criteria, one of which this amendment proposed to revise. The amendment establishes design standards that are neither stricter than the mandate nor impose additional or different responsibilities or requirements than the mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. As noted above, the proposed amendment complies with the direction of the federal mandate. To meet the federally mandated protection requirements for diversions, existing 405 KAR 16:080 sets forth design criteria, one of which this amendment proposes to revise.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 16:100. Permanent and temporary impoundments.

RELATES TO: KRS 350.100, 350.420, 350.455, 350.465
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 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 inspection and maintenance of temporary and permanent impoundments, and specific criteria for impoundments which are to be retained as permanent facilities after mining and reclamation.

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments.

(1) Impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), shall comply with the requirements of 30 CFR 77.216 and this regulation. The plan required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall also be submitted to the cabinet as part of the permit application.

(2) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this regulation using current, prudent engineering practices, and any design criteria established by the cabinet. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a) Permanent and temporary impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 16:160.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirement of this regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 16:190, Section 6.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments which have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent dams as defined in KRS 151.100 shall also comply with 405 KAR 7:040, Section 5, and with 401 KAR 4:030.

(7) Impoundments shall include a combination

of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified below, unless the cabinet requires a larger event.

(a) Except as provided in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 CFR 77.216(a), shall pass the:

1. Twenty-five (25) year, twenty-four (24) hour precipitation event if it is a temporary structure; or

2. The fifty (50) year, twenty-four (24) hour precipitation event if it is a permanent structure.

(b) Class A structures that do meet the criteria of MSHA, 30 CFR 77.216(a), shall pass the 100 year, twenty-four (24) hours precipitation event.

(c) Class B and C structures and all permanent dams as defined in KRS 151.100 shall comply with the criteria established in 401 KAR 4:030.

(8) Class A impoundments not meeting the criteria of MSHA, 30 CFR 77.216(a), may use a single spillway (if allowed pursuant to subsection (6) of this section) if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(9) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(10) Engineer inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified registered professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

(c) A copy of the report shall be retained at or near the mine site.

(11) Operator examinations. Impoundments subject to 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Other impoundments shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations are to be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional examination within a quarter are required. Reports of the examinations are to be retained at or near the mine site.

(12) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundments shall promptly inform the cabinet of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the cabinet shall be notified immediately. The cabinet shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon the following demonstration:

(1) The size and configuration of such impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provided for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

[Section 1. General. (1) Permanent impoundments are prohibited unless authorized by the cabinet, upon the basis of the following demonstration:]

[(a) The quality of the impounded water shall be suitable on a permanent basis for its intended use, and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water quality standards established pursuant to applicable state and federal laws.]

[(b) The level of water shall be sufficiently stable to support the intended use.]

[(c) Adequate safety and access to the impounded water shall be provided for proposed water users.]

[(d) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.]

[(e) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L. 83-566 (16 USC 1006). Requirements for impoundments that meet the size or other criteria of the MSHA, 30 CFR 77.216(a) are contained in the U.S. Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs," June 1976.

Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Practice Standard 378, "Ponds," October 1978.]

[(f) The size of the impoundment is adequate for its intended purposes.]

[(g) The impoundment will be suitable for its intended purposes and will be consistent with the approved postmining land use.]

[(2) Temporary impoundments of water in which the water is impounded by a dam shall meet the requirements of 405 KAR 16:090, Section 5.]

[(3) Excavations that will impound water during or after the mining operation shall have perimeter slopes that are stable and shall not be steeper than 1v:2h. Where surface run-off enters the impoundment area, the side slope shall be protected against erosion.]

[(4) Slope protection shall be provided to minimize surface erosion at the site and sediment control measures shall be required where necessary to reduce the sediment leaving the site.]

[Section 2. Dams and Embankments. (1) All dams and embankments of temporary and permanent impoundments, and the surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of 405 KAR 16:200 immediately after the dam or embankment is completed, provided that the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of 405 KAR 16:190, Section 6 and 405 KAR 16:200.]

[(2) All dams and embankments meeting or exceeding the size or other criteria of 30 CFR 77.216(a) shall be routinely inspected in accordance with 30 CFR 77.216-3 by a qualified registered professional engineer, by someone under the supervision of a qualified registered professional engineer, or by a person approved by MSHA for such inspections.]

[(3) All dams and embankments shall be routinely maintained during the mining operations. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible material present on the surface, other than material such as mulch or dry vegetation used for surface stability, shall be removed and all other appropriate maintenance procedures followed.]

[(4) All dams and embankments that meet or exceed the size or other criteria of 30 CFR 77.216(a) shall be certified to the cabinet by a qualified registered professional engineer immediately after construction as having been constructed in accordance with the design approved by the cabinet and annually thereafter as having been maintained to comply with the requirements of this regulation. All dams and embankments that do not meet the size or other criteria of 30 CFR 77.216(a) shall be certified by a qualified registered professional engineer immediately after construction, but need not be certified annually thereafter. Certification reports shall include statements on:]

[(a) Existing and required monitoring procedures and instrumentation;]

[(b) The design depth and elevation of any impounded waters at the time of the initial certification report or the average and maximum depths and elevations of any impounded waters over the past year for the annual certification reports;]

[(c) Existing storage capacity of the dam or embankment;]

[(d) Any fires occurring in the construction material up to the date of the initial certification or over the past year for the annual certification reports; and]

[(e) Any other aspects of the dam or embankment affecting stability.]

[(5) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the cabinet and shall comply with the requirements of this regulation. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the cabinet shall approve the plans before modification begins.]

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect permittees of surface mines operating under permanent program requirements. As of June 30, 1987, there were 1,487 surface mines operating under the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, preparation plants, etc.), a portion of which were regulated under surface mining standards. During Fiscal Year 1987, the cabinet received 416 new permit applications, and future permitting activities are anticipated to remain at about this same level.

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

1. First year: The design storms required for Class A impoundments will be reduced under this amendment. Other design criteria are also being relaxed. These changes will often result in smaller impoundments and design alternatives that may be more economical to the permittee. In this respect, the amendment will result in a savings to the permittee. Some operations that have not yet constructed one or more of their impoundments may wish to redesign the structures under the criteria of this amendment. Those wishing to redesign their structures will need to do so through the permit revision process. Additional costs will be associated with the preparation and processing of a permit revision; however, redesign of impoundments is optional, not mandatory. Those impoundments approved under the current regulation will not need to be redesigned for compliance with this amendment. The amendment will establish additional inspection and certification requirements for permanent and temporary impoundments. Additional costs will be attendant to these requirements.

2. Continuing costs or savings: The savings established during the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There will be no additional factors increasing or decreasing costs, and this amendment will not affect competition.

(b) Reporting and paperwork requirements: This amendment will establish additional inspection and certification requirements for permanent and temporary impoundments. This will increase reporting and paperwork requirements imposed on the permittee.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Processing of the permit revisions discussed in item (1)(a)1 above will result in additional expenses to the cabinet.

2. Continuing costs or savings: In order to take full advantage of the new design criteria, existing permittees will be filing their permit revisions soon after this amendment is adopted. Therefore, the costs incurred in the first year should decrease in subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs to the cabinet.

(b) Reporting and paperwork requirements: Additional paperwork will be necessary in order to process the permit revisions discussed in item (2)(a)1 above.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to implementation of the changes other than by promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: All of the text of this amendment is underlined, indicating it is all new to the regulation. However, many of the proposed requirement are already in place under existing 405 KAR 16:100, in the documents referenced in 405 KAR 16:100 Section 1(1)(e), or through a cross reference to 405 KAR 16:090 Section 5 in current 405 KAR 16:100 Section 1(2). The design criteria specified in this amendment are necessary for consistency with impoundment requirements of the Kentucky Division of Water and the Mine Safety and Health Administration.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 816.49, as revised by federal register 48 FR 43994 et seq., published September 26, 1983.

2. State compliance standards. This amendment contains standards addressing the following topics dealing with permanent and temporary impoundments: general construction requirements, stability requirements, freeboard standards, foundation requirements, storm-event design, engineer and operator inspections, emergency procedures for hazardous conditions, and criteria for approval of permanent impoundments.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate addresses the same topics as this amendment; however, with respect to design criteria, this amendment provides substance to clarify federal ambiguity and to comport with impoundment requirements of the Kentucky Division of Water and the Mine Safety and Health Administration.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate at 30 CFR 816.49(a)(2) authorizes the design criteria established by this amendment. In light of that provision, this amendment does not impose stricter requirements than those authorized by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. As noted above, 30 CFR 816.49(1)(2) authorizes the design criteria set forth in this amendment. The design criteria set forth in the amendment are necessary for consistency with impoundment requirements of the Kentucky Division of Water and the Mine Safety and Health Administration.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 16:110. Surface and groundwater monitoring.

RELATES TO: KRS 350.100, 350.405, 350.420, 350.465
PURSUANT TO: KRS Chapter 13A, 350.028, 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 the monitoring and reporting of surface water quality and quantity, and groundwater levels and quality and aquifer conditions, and the required duration of such monitoring.

Section 1. General Requirements. (1) Surface and groundwater monitoring shall be conducted in a manner acceptable to the cabinet and utilize, at a minimum, a sufficient number of appropriately located groundwater monitoring wells (or springs), surface water monitoring stations, and quantity and quality parameters to demonstrate that:

(a) The mining and reclamation operations are conducted in such a manner as to minimize disturbances to the hydrologic balance within the permit area and adjacent area pursuant to 405 KAR 16:060;

(b) The mining operation is meeting applicable effluent limitations and stream standards as required by 405 KAR 16:060, Section 1(3);

(c) Reclamation as required by KAR Title 405 is being accomplished and the operation is preventing material damage to the hydrologic balance in the cumulative impact area pursuant to 405 KAR 8:010, Section 14(2) and (3);

(d) The mining operation, pursuant to 405 KAR 16:060, Section 8, has not proximately resulted in the contamination, diminution, or interruption of a ground or surface water supply which is used for domestic, agricultural, industrial or other beneficial purpose; and

(e) The mining operation meets water quality criteria for bond release pursuant to 405 KAR 10:040.

(2) Surface and groundwater monitoring shall be coordinated with baseline data collection by conducting surface and groundwater monitoring at locations where baseline data was collected, or by other appropriate data collection and analysis procedures which will allow a comparison of baseline conditions with during-mining and postmining conditions.

(3) Equipment, structures, monitoring wells, or other facilities used to monitor surface and groundwater quantity and quality shall be properly installed, maintained, and operated, and shall be removed or otherwise properly disposed of, including sealing of monitoring wells, when no longer needed; except that monitoring wells may be transferred to the surface owner of lands where the well is located, pursuant to 405 KAR 16:060, Section 7.

(4) Except as provided under subsection (7) of this section:

(a) Surface and groundwater monitoring data collection shall begin during the calendar quarter [at the time] of initial disturbance and continue during mining and reclamation until final bond release.

(b) Surface and groundwater monitoring data shall be collected once each calendar quarter, with no two (2) samples collected closer than thirty (30) days apart. The results of the quarterly data collection must be submitted to the appropriate regional office on or before the end of the first month following the calendar quarter in which the data were collected. [quarterly and the results submitted to the cabinet within one (1) month after data collection.]

(5) If the results of any data collection indicate noncompliance with a permit condition, the permittee shall promptly notify the cabinet in writing and shall take immediate corrective actions to return the operations to compliance with all permit conditions.

(6) The cabinet may require the installation of additional groundwater monitoring wells and surface water monitoring stations, the collection of additional quantity and quality parameters, and more frequent data collection and submittal if additional information is needed to meet the requirements of subsection (1) of this section.

(7)(a) Pursuant to an application for a revision of a permit, the cabinet may approve modifications of the monitoring requirements for surface and groundwater, except those required by the KPDES permit, including the parameters covered and the sampling frequency, if the permittee demonstrates to the cabint's satisfaction, using the monitoring data obtained under this regulation, that:

1. The operation has minimized disturbance to the hydologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support the postmining land uses; and the water rights of other users have been protected or replaced; and

2. If approval of cessation of monitoring is sought, monitoring is no longer necessary to achieve the purposes of this regulation.

(b) However, the cabinet shall not approve cessation of monitoring until at least five (5) years after completion of active mining on the permit, and shall not approve reduction of sampling frequency to less than quarterly until at least two (2) years after completion of active mining on the permit.

Section 2. Groundwater Monitoring. (1) Groundwater monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:030, Section 32(4).

(2) At a minimum, groundwater monitoring shall include the parameters of:

(a) Water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees Centigrade; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.

(3) If the applicant can demonstrate to the

satisfaction of the cabinet by use of the baseline geologic or hydrologic information, the mining and reclamation plan, and the determination of probable hydrologic consequences that a particular water transmitting zone in the proposed permit and adjacent area is not one which serves as an aquifer which significantly ensures the hydrologic balance anywhere within the cumulative impact area, then monitoring of that water transmitting zone may be waived by the cabinet.

Section 3. Surface Water Monitoring. (1) Surface water monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:030, Section 32(4).

(2) At a minimum, surface water monitoring shall include the parameters of:

(a) Discharge; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees Centigrade; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(3) Surface water monitoring for KPDES.

(a) Monitoring of point source discharges under a KPDES permit shall be conducted in accordance with 40 CFR Parts 122, 123 and 434 and in accordance with the requirements of the KPDES permit. The permittee shall submit a copy of the KPDES monitoring results to the cabinet on the time schedule and in the format required by the KPDES permit. The permittee shall report all noncompliances with the KPDES permit to the cabinet in the manner required by the KPDES permit.

(b) Compliance with KPDES monitoring requirements shall not relieve the permittee of the obligation to comply with other surface and groundwater monitoring requirements of this regulation.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect permittees of surface mines operating under permanent program requirements. As of June 30, 1987, there were 1,487 surface mines operating under the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, preparation plants, etc.), a portion of which were regulated under surface mining standards. During Fiscal Year 1987, the cabinet received 416 new permit applications, and future permitting activities are anticipated to remain at about this same level. The amendment revises language to clarify the cabinet's interpretation of current regulatory provisions and to add a provision authorizing the use of springs as groundwater monitoring stations. More substantively, the amendment adds a provision that will allow the cabinet to approve reductions in surface and groundwater monitoring. The authorized reductions will apply to parameters monitored as well as the frequency of sampling. Monitoring under the KPDES program will not be eligible for these reductions. Reductions in surface and groundwater monitoring will be difficult to justify, and very few permittees will be able to take advantage of these regulatory relaxations. Similarly, few permittees will be able to utilize springs rather than wells as groundwater monitoring stations. In light of this, the amendment will actually affect only a small portion of the entities identified above.

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

1. First year: Use of springs as groundwater monitoring stations will require prior cabinet approval in the original permit application or, if justifiable, through a permit revision. Any reductions in surface or groundwater monitoring will have to be processed through as a permit revision. The costs incurred in getting a permit revision approved will be offset to some extent by the financial savings of reduced monitoring or a spring sampling program. Should the permittee determine that the revision costs do not outweigh the benefits of a revised monitoring program, monitoring can continue under the already approved plan.

2. Continuing costs or savings: The costs costs/savings established during the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and the amendment will have no affect on competition.

(b) Reporting and paperwork requirements: A reduction in surface or groundwater monitoring will bring with it a reduction in reporting and paperwork, since monitoring reports will only be filed for the periods and parameters actually monitored.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment will cause a few more revision applications to be filed with the cabinet (392 revisions were processed in Fiscal Year 1987). Cost increases will be incurred in

processing the additional revisions.

2. Continuing costs or savings: This cost factors established during the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs to the cabinet.

(b) Reporting and paperwork requirements: Processing the permit revisions discussed above will impose additional paperwork on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternative methods of implementing these changes other than by promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 780.21(i)(2), as revised by federal register 48 FR 43956 et seq., published September 26, 1983, and 30 CFR 816.41, as revised by federal register 48 FR 43956 et seq., published September 26, 1983.

2. State compliance standards. This amendment will allow springs to be used as groundwater monitoring stations; will add specificity to the requirement for quarterly surface and grounwater monitoring; will establish a provision allowing for a reduction in surface and groundwater monitoring under certain limited circumstances; and will clarify that, in justifying a groundwater monitoring waiver for a particular water transmitting zone, the applicant must demonstrate that the zone is not an aquifer that ensures the hydrologic balance anywhere within the cumulative impact area.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate does not restrict groundwater monitoring to wells, and thus would allow for the use of springs for groundwater monitoring. The federal mandate also requires the submitting of groundwater monitoring data to the regulatory authority every three months, or more frequently as prescribed by the regulatory authority. The mandate also contains a provision allowing the regulatory authority to approve a reduction in non-KPDES hydrologic monitoring (including parameters monitored and sampling frequency) under certain circumstances. Also, the mandate applies the "anywhere test" in determining if groundwater monitoring of a particular rock unit need not be conducted.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Some of the wording of this amendment is different than that contained in the federl mandate, but the requiremnts imposed are not stricter.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Where language in this amendment differs from that contained in the federal mandate, the deviation is needed for clarity.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 16:120. Use of explosives.

RELATES TO: KRS 350.430

PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 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 specific requirements for the use of explosives for surface blasting, including qualified supervision of blasting, preblasting surveys, blasting schedules, warning signals, restrictions on timing and location of blasting, limitations on airblast and ground vibration, seismographic measurements, and records of blasting operations.

Section 1. General Requirements. (1) Each permittee and person who conducts blasting operations shall comply with all applicable local, state, and federal laws and regulations in the use of explosives.

(2) Blasts that use more than five (5) pounds of explosives or blasting agents shall be conducted according to the schedule required by Section 3 of this regulation.

(3)[(a) During the time before twelve (12) months after the approval of Kentucky's blaster certification program by OSM, all blasting operations shall be conducted, under the supervision of a blaster licensed by the Kentucky Department of Mines and Minerals, by experienced, trained, and competent persons who understand the hazards involved. During this time a licensed blaster and at least one (1)

other person shall be present at the firing of a blast.]

[(b) On and after twelve (12) months from the approval of Kentucky's blaster certification program by OSM,] Each permittee shall have all blasting operations conducted under the direction of a blaster certified in accordance with 405 KAR 7:070. [On and after this date,] A certified blaster and at least one (1) other person shall be present at the firing of a blast.

(c) Persons responsible for blasting operations at a blasting site shall be familiar with the blasting plan and site-specific performance standards.

(4)(a) An anticipated blast design shall be submitted if blasting operations will be conducted within:

1. 1,000 feet of any building used as a dwelling; public building; school; church; or commercial, community or institutional building outside the permit area; or

2. 500 feet of an active or abandoned underground mine.

(b) The blast design shall [may] be presented as part of the permit application or shall be submitted to the department's appropriate regional office at least thirty (30) days prior to initiation of the blast [a time before the blast approved by the cabinet].

(c) The blast design shall contain sketches of the drill patterns, delay periods, and decking; shall indicate the types and amounts of explosives to be used, critical dimensions, and the locations of structures to be protected; shall include a general description of structures to be protected; and shall contain a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground vibration standards in this regulation.

(d) The blast design shall be prepared and signed by a certified blaster.

(e) The cabinet may require changes to the design submitted in order to ensure compliance with KRS Chapter 350; SMCRA; and Title 405, Chapters 7 through 24.

Section 2. Preblasting Survey. (1) At least thirty (30) days before initiation of blasting, the permittee shall notify, in writing, all residents or owners of dwellings or other structures located within one-half (1/2) mile of the permit area how to request a preblasting survey in accordance with subsection (2) of this section.

(2) A resident or owner of a dwelling or other structure within one-half (1/2) mile of any part of the permit area may request a preblasting survey. This request shall be made in writing directly to the permittee or to the cabinet which shall promptly notify the permittee. The permittee shall promptly conduct a preblasting survey of the dwelling or structure. If a structure is renovated, modified, or added to subsequent to a preblasting survey, then, upon request a survey of such additions and renovations shall be performed in accordance with this section.

(3) The survey shall determine the condition of the dwelling or structure and document any preblasting damage and other physical conditions that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface condition and readily available data unless additional data are specifically required by the cabinet.

(4) A written report of the survey shall be promptly prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting plan to prevent damage. If the resident or structure owner or his representative accompanies the surveyor, the report shall contain the name of such person. Copies of the report shall be promptly provided to the person requesting the survey and to the cabinet. If the person requesting the survey disagrees with the results of the survey, he or she may submit, in writing to both the permittee and the cabinet, a detailed description of the specific areas of disagreement. The cabinet may require additional measures to ensure that adequate and accurate information is included in the preblasting survey and to ensure compliance with the requirements of this regulation.

(5) Any surveys requested more than ten (10) days before the planned initiation of blasting shall be completed by the permittee before the initiation of blasting.

Section 3. Public Notice of Blasting Schedule. (1) Blasting schedule publication.

(a) Each permittee shall publish a blasting schedule at least ten (10) days, but not more than thirty (30) days, before beginning a blasting program in which blasts that use more than five (5) pounds of explosives or blasting agents are detonated. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.

(b) Copies of the schedule shall be distributed in accordance with the time frame specified in paragraph (a) of this subsection to the appropriate department regional office, to local governments and public utilities, and to each residence within one-half (1/2) mile of the blasting site described in the schedule.

(c) The permittee shall republish and redistribute the schedule at least every twelve (12) months and revise, republish, and redistribute the schedule at least ten (10) days, but not more than thirty (30) days, before blasting whenever the area covered by the schedule changes, the actual time periods for blasting significantly differ from those identified in the prior announcement, or the permittee changes the types or patterns of warning or all-clear signals identified in the prior schedule.

(2) Blasting schedule contents. The blasting schedule shall contain at a minimum:

(a) The name, address, and telephone number of the permittee;

(b) Identification of the specific areas in which blasting will take place;

(c) Identification of the dates and time periods when explosives are to be detonated;

(d) Identification of the methods to be used to control access to the blasting area; and

(e) Identification of the types and patterns of audible warnings and all-clear signals to be used before and after blasting.

Section 4. Surface Blasting Requirements. (1) General requirements.

(a) The permittee shall conduct blasting operations at times approved by the cabinet and announced in the blasting schedule. The cabinet may limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare.

(b) All blasting shall be conducted between sunrise and sunset. The cabinet may specify more restrictive time periods based on public requests or other relevant information and according to the need to adequately protect the public from adverse noise and other impacts. Blasting may, however, be conducted between sunset and sunrise if:

1. A blast that has been prepared during the day must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard could result that cannot be adequately mitigated;

2. Prior approval for conducting the blasting between sunset and sunrise is obtained from the Kentucky Department of Mines and Minerals; and

[3. In addition to the required warning signals, oral notices are provided to all persons within one-half (1/2) mile of the blasting site; and]

3. [4.] A complete written report of blasting at night is filed by the permittee with the cabinet not later than three (3) days after the night blasting, not including Saturdays, Sundays, or legal holidays. The report shall include a detailed description of the reasons for the delay in blasting including why the blast could not be held over to the next day, identification of the time at which the blast was actually conducted, a description of the warning notices given, and a copy of the blast record required by Section 6 of this regulation.

(c) Unscheduled blasts may be conducted only where public or operator health and safety so require and for emergency blasting actions. When a permittee conducts an unscheduled blast, the permittee, using audible signals, shall notify all persons within one-half (1/2) mile of the blasting site and document the reason for the unscheduled blast in accordance with Section 6(20) of this regulation.

(d) The use of a charge weight of explosives in excess of 40,000 pounds in any blast shall not occur without a valid permit for such blasting from the Kentucky Department of Mines and Minerals. Such a permit shall be present at the blast site while such blasting is being conducted.

(2) Warnings. Warning and all-clear signals of different character or pattern that are audible within a range of one-half (1/2) mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half (1/2) mile of the permit area shall be notified of the meanings of the signals as identified in the blasting schedule through appropriate communications. These notifications shall be periodically delivered or otherwise communicated to such persons in a manner which can reasonably be expected to inform such persons of the meanings of the signals. Delivery or other appropriate communication of the meanings of such signals to the head of a household or to the person in charge of a place of business shall constitute sufficient notification of the meanings of such signals to all persons at such household or place of business. Each permittee shall maintain signs in accordance with 405 KAR 16:030, Section 6.

(3) Access control. Access to the blasting area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting until the blaster has reasonably determined:

(a) That no unusual circumstances, such as imminent slides or undetonated charges, exist; and

(b) That access to and travel in or through the blasting area can be safely resumed.

(4)(a) Airblast. Airblast shall be controlled so that it does not exceed the values specified in Appendix A of this regulation at any dwelling; public building; school; church; or commercial, community, or institutional building outside the permit area except as provided in subsection (8) of this section.

(b) In all cases except those involving the use of C-weighted, slow-response devices, the measuring systems used shall have a flat frequency response of at least 200 Hz at the upper end. The C-weighted shall be measured with a Type 1 sound level meter that meets the standard American National Standards Institute (ANSI) S1.4-1971 specifications.

(c) If necessary to prevent damage, the cabinet shall specify lower maximum allowable airblast levels than those in Appendix A of this regulation for use in the vicinity of a specific blasting operation.

(d)1. To evaluate compliance with the airblast standards of this regulation, throughout blasting operations the permittee shall periodically monitor [conduct periodic monitoring to ensure] compliance with the airblast standards.

2. Monitoring pursuant to this paragraph shall be deemed "periodic" if at least three (3) consecutive blasts are monitored one (1) time during the period of January through June and one (1) time during the period of July through December; provided however:

a. The cabinet may approve or require an alternative frequency if deemed appropriate based on site conditions, the anticipated blast design, the proposed blasting plan, and any other pertinent information available to the cabinet. A plan for less frequent airblast monitoring shall be deemed approved if the plan is specified as a condition of permit issuance or is specified in the approved permit application and not modified by a condition of permit issuance. A plan for more frequent airblast monitoring shall be established in the approved permit application, as a condition of permit issuance, or after permit issuance in accordance with subparagraph 3 of this paragraph.

b. If detonation of explosives did not occur during the designated monitoring period, airblast monitoring need not be conducted during that period.

3. Subsequent to permit issuance, the cabinet may require airblast measurements of any or all blasts and may specify the locations of such measurements.

4. The results of all airblast monitoring shall be recorded in accordance with Section 6 of this regulation.

(5) Flyrock. Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting site [vicinity] more

than half the distance to the nearest dwelling; public building; school; church; commercial, community, or institutional building; or any occupied structure and in no case beyond the boundary of the permit area or beyond the area of regulated access required under subsection (3) of this section.

(6) Prevention of adverse impacts. Blasting shall be conducted to prevent injury to persons; damage to public and private properties outside the permit area; adverse impacts on any underground mine; changes in the courses, channels, and availability of surface waters outside the permit area; and alterations of the ground water flow systems and ground water availability outside the permit area.

(7) Ground vibration.

(a) General. In all blasting operations except as otherwise authorized by subsection (8) of this section, the maximum ground vibration shall not exceed the values approved in the blasting plan required under 405 KAR 8:030. The maximum ground vibration at the location of any dwelling; public building; school; church; or commercial, community, or institutional building outside the permit area shall be established in accordance with either the maximum peak particle velocity limits of paragraph (b) of this subsection, in accordance with the scale-distance equations of paragraph (c) of this subsection, in accordance with the blasting-level equations of paragraph (d) of this subsection, or by the cabinet pursuant to paragraph (e) of this subsection. All other structures in the vicinity of the blasting area, such as water towers, pipelines, and other utilities; tunnels; dams; impoundments; and underground mines shall be protected from damage by establishment of a maximum allowable limit on the ground vibration proposed by the applicant in the blasting plan and approved by the cabinet.

(b) Maximum peak particle velocity. The maximum ground vibration shall not exceed the limits established in Appendix B of this regulation at the location of any dwelling; public building; school; church; or commercial, community, or institutional building outside the permit area. Seismographic records shall be recorded for each blast.

(c) Scale-distance equations.

1. A permittee may use the scale-distance equations of Appendix C of this regulation to determine the allowable charge weight of explosives to be detonated within any eight (8) millisecond period without seismic monitoring.

2. The development of a modified scale-distance factor may be authorized by the cabinet based on a written request by the permittee supported by seismographic records of blasting at the mine site. The modified scale distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the limits established in Appendix B of this regulation at a ninety-five (95) percent confidence level.

(d) Blasting-level equations. A permittee may use the ground vibration limits calculated from the blasting-level equations in Appendix D of this regulation to determine the maximum allowable ground vibration. If the blasting-level equations are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominate frequency contained in the blasting records shall be approved by the cabinet before application of this alternative blasting criterion.

(e) The maximum allowable ground vibration shall be reduced by the cabinet beyond the limits of this subsection if the cabinet determines that lower limits are necessary to provide damage protection and ensure compliance with subsection (6) of this section.

(8) The maximum airblast and ground vibration standards of this section shall not apply at the following locations:

(a) At structures owned by the permittee and not leased to another party; and

(b) At structures owned by the permittee and leased to another party, if a written waiver by the lessee is submitted to the cabinet prior to blasting.

Section 5. Seismographic Measurements. (1) The maximum peak particle velocity shall be recorded as either the largest of the peak particle velocities measured in three (3) mutually perpendicular directions or the vector sum thereof.

(2) The cabinet may require a permittee to conduct seismic monitoring of any or all blasts and may specify the location at which such measurements are taken and the degree of detail necessary in the measurement.

Section 6. Records of Blasting Operations. A record of each blast, including any required seismograph reports, shall be retained for at least five (5) years and shall be available for inspection by the cabinet and the public on request. The record shall contain the following data:

(1) Name of the permittee.

(2) Location, date, and time of the blast.

(3) Name, signature, certification number, and license number of the blaster in charge of the blast.

(4) Identification of and direction and distance, in feet, from the nearest blast hole to the nearest dwelling; public building; school; church; or commercial, community, or institutional building outside the permit area, except those described in Section 4(8) of this regulation.

(5) Weather conditions, including those which may cause possible adverse blasting effects.

(6) Type of material blasted.

(7) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern.

(8) Diameter and depth of holes.

(9) Types of explosives used.

(10) Total weight of explosives used.

(11) Total weight of explosives used per hole.

(12) Maximum weight of explosives detonated within any eight (8) millisecond period.

(13) Maximum number of holes detonated within any eight (8) millisecond period.

(14) Type of initiation system.

(15) Type of circuit.

(16) Type and length of stemming.

(17) Mats or other protection used.

(18) Type of delay detonator and delay periods used.

(19) Seismographic and airblast records, if used, which include for each record:

(a) Type of instrument, sensitivity, and either calibration signal or certification of annual calibration;

(b) Exact location of instrument and the date of, time of, and distance from the blast;
(c) For seismographic records, the actual seismographic record;
(d) Name of the person and firm taking the reading;
(e) Name of the person and firm analyzing the seismographic record; and
(f) As applicable, vibration and airblast levels recorded.
(20) Reasons and conditions for each unscheduled blast.

Appendix A of 405 KAR 16:120
Airblast Limitations

Lower frequency limit of measuring system in Hz (±3dB)	Maximum level in dB
*0.1 Hz or lower - flat response	134 peak
2 Hz or lower - flat response	133 peak
6 Hz or lower - flat response	129 peak
*C-weighted, slow response	105 peak dBC

*These measuring systems shall be used only when approved by the cabinet.

Appendix B of 405 KAR 16:120
Peak Particle Velocity Limits

Distance from the blasting site in feet	Maximum allowable peak particle velocity for ground vibration in inches per second
0 to 300	1.25
301 to 5,000	1.00
5,001 and beyond	0.75

Appendix C of 405 KAR 16:120
Scale-distance Equations

Distance (D) from the blasting site in feet	Scale-distance equation
0 to 300	$W = (D/50)^2$
301 to 5,000	$W = (D/55)^2$
5,001 and beyond	$W = (D/65)^2$

where: W = the maximum weight of explosives that can be detonated within any eight (8) millisecond period.
where: D = the distance, in feet, from the blasting site to the nearest protected structure.

Appendix D of 405 KAR 16:120
Blasting-level Equations

Blasting vibration frequency	Blasting-level equation
Hz < 4	$V = 0.19Hz^{0.9904}$
4 ≤ Hz ≤ 11	V = 0.75
11 < Hz < 30	$V = 0.0719\ Hz^{0.9776}$
Hz ≥ 30	V = 2.00

where: Hz = the blast vibration frequency in hertz.
where: V = the maximum allowable particle velocity in inches per second.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk
(1) Type and number of entities affected: This amendment will affect permittees of surface mines operating under permanent program requirements. As of June 30, 1987, there were 1,487 surface mines operating under the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, preparation plants, etc.), a portion of which were regulated under surface mining standards. During Fiscal Year 1987, the cabinet received 416 new permit applications, and future permitting activities are anticipated to remain at about this same level.
(a) Direct and indirect costs or savings to those affected:
1. First year: This amendment adds specificity to the requirement for "periodic" airblast monitoring. If a permit has already been issued requiring airblast monitoring more frequent than that specified in this amendment, the permittee may be able to file a permit revision to lessen the monitoring frequency. If a permittee can lessen the frequency of airblast monitoring under the specificity of this amendment, moneys will be saved. The cabinet does not anticipate that the other changes in this amendment will have any cost or savings effect on the regulated entities.
2. Continuing costs or savings: The savings established during the first year will continue for subsequent years.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and this amendment will not affect competition.
(b) Reporting and paperwork requirements: A blast design must be filed with the cabinet whenever blasting is to be conducted within 500 feet of an underground mine or within 1000 feet of a dwelling; public building; school, church, or commercial, community, or institutional

building outside the permit area. Under current 405 KAR 16:120, this blast design must either be included in the permit application or be filed "at a time before the blast approved by the cabinet." (id., Section 1(4)(b).) This amendment will require that the blast design be included in the permit application or submitted to DSMRE's regional office at least 30 days prior to the blast.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment's specificity in the requirements for periodic airblast monitoring will cause some permittees to file permit revisions to reduce the monitoring frequency imposed under their current permits. The processing of these permit revisions will be done at additional expense to the cabinet.

2. Continuing costs or savings: In order to take advantage of less frequent airblast monitoring requirements as soon as possible, existing permittees will be filing their permit revisions soon after this amendment is adopted. Therefore, the costs incurred in the first year should decrease in subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs to the cabinet.

(b) Reporting and paperwork requirements: Processing the permit revisions discussed above will impose additional paperwork on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternative methods of implementing these changes other than by promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 816.61, as revised by federal register 48 FR 9788 et seq., published March 8, 1983; 30 CFR 816.64, as revised by federal register 48 FR 9788 et seq., published March 8, 1983; and 30 CFR 816.67, as revised by federal register 48 FR 9788 et seq., published March 8, 1983.

2. State compliance standards. This amendment requires that blast designs either be included in the permit application or be submitted to DSMRE's appropriate regional office at leat 30 days before the blast. The amendment also elaborates on what constitutes "periodic" airblast monitoring. Additionally, the amendment deletes the requirement that oral notices be provided to all persons within one-half mile of the blasting site when blasting is to be conducted at night. Use of audible warning and all-clear signals for all blasting, nighttime and otherwise, will remain in the regulation.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that blast designs either be included in the permit application or be submitted at a time before the blast approved by the regulatory authority. The federal mandate also requires that blasting be conducted to prevent injury to persons and damage to public or private property outside the permit area, and to assure compliance with these standards, the mandate sets airblast limits and dictates that airblast be "periodically" monitored. The mandate also requires the use of audible signals to notify residents within one-half mile of the blast site for nighttime blasting, but it does not require the use of oral notice.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment establishes a uniform time criteria for the submission of blast designs, whereas the federal mandate simply states that blast designs can be submitted at a time before the blast approved by the cabinet. The amendment also replaces the vague reference to "periodic" airblast monitoring with specific standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Where the amendment deviates from federal language, the reason is to remove ambiguity. The standards established are not more stringent than the federal mandate, they are simply less ambiguous.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 16:150. Disposal of <u>noncoal mine waste</u> [waste other than coal processing waste, soil or rock].

RELATES TO: KRS 350.020, 350.090, 350.465

PURSUANT TO: KRS <u>Chapter 13A,</u> 350.028, 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 the storage and disposal of wastes other than coal mine [processing] waste, soil or rock.

Section 1. Storage and Disposal. (1) Storage. Noncoal mine wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustibles generated during surface mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface run-off do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(2) Disposal. Final disposal of such noncoal mine wastes shall be in a designated disposal site in the permit area or a state-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the site do not degrade surface or ground water. [other appropriate disposal areas approved by the cabinet. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site.] Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed a minimum of two (2) feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 405 KAR 16:200. Operation of the disposal site shall be conducted in accordance with all local, state, and federal requirements.

(3) At no time shall any noncoal mine waste [such waste material] be deposited in a refuse pile or impounding structure [at coal processing waste banks, dams or impoundments], nor shall any such excavation for waste disposal be located within eight (8) feet of any coal outcrop or coal storage area.

(4) Disposal of hazardous and solid waste other than "coal mining solid waste" (as defined by regulations of the Division of Waste Management) shall not be conducted on the permit area, unless a permit is obtained from the Kentucky Division of Waste Management.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect permittees of surface mines operating under permanent program requirements. As of June 30, 1987, there were 1,487 surface mines operating under the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, preparation plants, etc.), a portion of which were regulated under surface mining standards. During Fiscal Year 1987, the cabinet received 416 new permit applications, and future permitting activities are anticipated to remain at about this same level. This amendment simply increases the clarity of current 405 KAR 16:150. For example, permittees using a mine site for disposal of hazardous or solid waste, other than coal mining solid waste, must obtain a disposal permit from the Kentucky Division of Waste Mangement. This requirement exists currently; however, proposed Section 1(4) makes the requirement clear. For the most part, no additional requirements are being imposed, but clarity is being added. The only change of substance in this amendment addresses the design and construction of water barriers around wastes to prevent the contamination of surface and groundwater. Whereas the current regulation mandates water barriers as the sole type of protective measure, this amendment provides more flexibility. Under the amendment, disposal sites must be designed and constructed to ensure that leachate and drainage from the site do not degrade surface or groundwater. If more control practices than water barriers are needed, they must be implemented. Likewise, if contamination can be prevented without water barriers, such barriers need not be installed.

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

1. First year: This amendment may result in additional savings to some permittees who are able to implement more cost effective means of waste disposal. Conversely, the amendment has the potential to increase some disposal costs; however, this should be rare.

2. Continuing costs or savings: The savings and costs established in the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and this amendment will not affect competition.

(b) Reporting and paperwork requirements: This amendment will not impose additional reporting or paperwork requirements on the affected entities.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment will not cause the cabinet to incur additional costs or benefit from additional savings.
2. Continuing costs or savings: This amendment will not cause the cabinet to incur additional costs or benefit from additional savings.
3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs to the cabinet.
(b) Reporting and paperwork requirements: The amendment will not impose additional paperwork or reporting requirements on the cabinet.
(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatiave methods of implementing these changes other than by promulgation of this amendment.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.
(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.
(6) Any additional information or comments: The reference to Division of Waste Mangement requirements is being made to alleviate confusion and to clarify the relationship between the DWM requirements and those of DSMRE.
TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 816.89, as revised by federal register 51 FR 41952 et seq., published November 11, 1986.

2. State compliance standards. This amendment requires that noncoal mine waste be disposed of in a designated disposal site in the permit area or in a state-approved solid waste disposal area. The amendment also requires that disposal sites in the permit area be designed and cosntructed to ensure that leachate and drainage from the site do not degrade surface or groundwater. Additionally, the amendment prohibits the disposal of hazardous waste and solid waste, other than coal mine solid waste, on the permit area, unless a permit is obtained from the Kentucky Disivion of Waste Management.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that noncoal mine waste be disposed of in a designated disposal site in the permit area or in a state-approved solid waste disposal area. The mandate also requires that disposal sites in the permit area be designed and constructed to ensure that leachate and drainage from the site do not degrade surface or groundwater.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment references the Kentucky Division of Waste Management's requirements for hazardous and solid waste permits. This reference is not included in the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The reference to hazardous and solid waste permits of the Kentucky Division of Waste Management is being added to eliminate confusion and clarify the relationship between the DWM requirements and those of DSMRE.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

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) Except as provided in subsection (9) of this section, 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);

(b) Ensure a long-term static factor of safety of at least one and three-tenths (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) Minimize erosion and adverse effects on surface and ground water both on and off the site; and

(e) Support the approved postmining land use.

(2) Spoil, except excess spoil disposed of in accordance with 405 KAR 16:130, shall be returned to the excavated areas.

(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 one and three-tenths (1.3) shall be achieved.

(4) 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) 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;]

(b) [(d)] Are not disapproved [approved] by the cabinet;

(c) [(e)] Do not adversely affect the stability of the backfilled area; and

(d) [(f)] Are not located on steep-slope outslopes.

(6) Impoundments on backfilled areas may be approved, if 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 steep-slope outslopes.

(7) 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 of 405 KAR 20:060.

(8) 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 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 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. (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) 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 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 acid-forming materials, toxic-forming materials, and combustible materials to be placed below the permanent water table.

(3) The cabinet shall require 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.

Section 4. Thin Overburden. (1) The provisions of this section apply only where the final thickness is less than eight-tenths (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 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 one and two-tenths (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 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 one and three-tenths (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. Except as provided in subsections (a) and (b) of this section, 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 replanted according to 405 KAR 16:200.

(a) [The cabinet may specify that] Rills or gullies less than nine (9) inches deep shall [of lesser size] be stabilized and the area reseeded and/or replanted, if the rills or gullies are disruptive to the approved postmining land use or to the establishment of vegetation, may result in additional erosion and sedimentation, or may cause or contribute to the violation of a water quality standard.

(b) Rills and gullies deeper than nine (9) inches need not be filled, regraded, and revegetated if all of the following criteria are met:

1. They are incised to solid bedrock or are otherwise stable and not likely to further erode;

2. They are not disruptive to the approved postmining land use or to the establishment of the vegetative cover; and

3. They neither cause nor contribute to the violation of water quality standards.

Section 7. Remining Previously Mined Areas. (1) General requirements. Remining operations on previously mined areas, including steep slope areas, that contain a preexisting highwall shall comply with Sections 1 through 6 of this regulation except as provided in this section.

(2) Definitions.

(a) "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 preexisting highwall face is removed; or

2. The highwall resulting from remining where the preexisting highwall is vertically enlarged.

(c) "Previously mined area" means land disturbed by earlier activities related to coal mining on which none of the earlier disturbances were subject to any of the standards of SMCRA. [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.]

(d) "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) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(3) Variances to backfilling and grading requirements for remining operations. The requirements within Section 2(1)(a) of this regulation to completely eliminate highwalls shall 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 preexisting or modified highwall. The highwall shall be eliminated to the maximum extent technically practicable in accordance with the following criteria:

(a) All reasonably available spoil shall be used to backfill 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 (one and three-tenths (1.3) long-term static factor of safety), provided, however, that the exposed coal seam shall be covered in accordance with Section 3 of this regulation.

(c) Spoil generated or handled by the remining operation shall not be placed on the fill section of any existing or new bench.

(d) 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 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.

(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 or safety or to the environment.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests

that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect permittees of surface mines operating under permanent program requirements. As of June 30, 1987, there were 1,487 surface mines operating under the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, preparation plants, etc.), a portion of which were regulated under surface mining standards. During Fiscal Year 1987, the cabinet received 416 new permit applications, and future permitting activities are anticipated to remain at about this same level. Not all of the persons identified above will be directly impacted by this amendment. The regulatory provisions being revised are not broad enough to impact the entire coal community. The three changes being made in this amendment are as follows: the criteria that must be met to retain small depressions on backfilled areas are being relaxed; an exemption from the requirement to regrade certain rills and gullies that are deeper than nine inches is being added; and the definition of "previously mined area" to include certain post-SMCRA disturbances is being broadened, so more operations will be eligible for the variances set forth for the remining of previously mined areas.

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

1. First year: All three of the changes will result in savings. The changes to the small depression provisions will lessen the need for a permittee to regrade backfilled areas; the rills and gullies exemption will eliminate the need, in some instances, for a permittee to fill and reseed certain rills and gullies; and the "previously mined area" change will encourage the reclamation of already disturbed areas by applying the backfilling and grading variance for remining operations to a wider universe of mines. The rills and gullies change will also.

2. Continuing costs or savings: The savings established in the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and the amendment will have no affect on competition.

(b) Reporting and paperwork requirements: An operation that may be eligible for the backfilling and grading variance for remining will need to demonstrate that the affected area meets the definition of a "previously mined area." This demonstration will be included in the permit application.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will have to make determinations as to whether a rill or gully deeper than nine inches needs to be filled and reseeded. Also, determinations will have to be made regarding whether a proposed remining area meets the defintion of a "previously mined area."

2. Continuing costs or savings: The costs established in the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease the cabinet costs.

(b) Reporting and paperwork requirements: This amendment will not impose any additional paperwork or reporting requirements on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternative methods of implementing these changes other than by promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 816.102, as revised by federal register 48 FR 41719 et seq., published September 16, 1983; 30 CFR 816.95, as revised by federal register 48 FR 1159 et seq., published January 10, 1983; and 30 CFR 701.5, as revised by federal register 52 FR 17526 et seq., published May 8, 1987.

2. State compliance standards. This amendment allows for the retention of small depressions on backfilled areas in certain circumstances, allows rills and gullies deeper than nine inches to remain on backfilled areas in certain situations, and redefines the term "previously mined area" to mean lands disturbed by earlier activities related to coal mining on which none of the earlier disturbances were subject to any of the standards of SMCRA.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate allows for the retention of small depressions on backfilled areas in certain circumstances, allows rills and gullies deeper than nine inches to remain on backfilled areas in certain situations, and defines the term "previously mined area" as lands previously mined on which there were no surface coal mining operations subject to the standards of the Act (SMCRA).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter requirements than the federal mandate; however, the amendment does not track federal language in every instance.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Where the amendment deviates from federal language, the deviation is to increase clarity and remove ambiguite. The proposed standards, responsibilities, and requirements are not stricter than those of the federal mandate.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 18:010. General provisions.

RELATES TO: KRS 350.020, 350.090, 350.093, 350.151, 350.410, 350.440, 350.465
PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 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 contains general performance standards for maximizing coal recovery, prevention and correction of landslides, temporary cessation of operations, and permanent abandonment of operations.

Section 1. Applicability. The provisions of this chapter are applicable to all underground mining activities including coal processing plants, conducted under Title 405, Chapters 7 through 24. The provisions of this chapter also apply to those special categories of underground mining activities for which performance standards are set forth under 405 KAR 20:020 through 405 KAR 20:080, except to the extent that a provision of those regulations specifically exempts a particular category from a particular requirement of this chapter.

Section 2. Coal Recovery. Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal operations is minimized.

Section 3. Slides. At any time a slide occurs which may have a potential adverse effect on property, health, safety, or the environment, the permittee shall notify the cabinet by the fastest available means and comply with any remedial measures required by the cabinet.

Section 4. Permanent Abandonment of Operations. (1) Notice required. On or before the date of [Not less than thirty (30) days prior to] permanent abandonment of operations, the permittee shall provide written notice to the cabinet that such abandonment is intended.
(2) Prior to permanent abandonment, and prior to removal of necessary equipment from the site, all affected areas shall be closed, backfilled, and otherwise permanently reclaimed in accordance with the requirements of KRS Chapter 350, the regulations of this Title, and the permit.
(3) All equipment, underground openings, structures, or other facilities not required for monitoring shall be removed and the affected areas reclaimed unless the cabinet approves the retention of such equipment, openings, structures, or other facilities as compatible with the postmining land use or as beneficial to environmental monitoring.

Section 5. Temporary Cessation of Operations. (1) Notice required. [Not less than three (3) days] Prior to a temporary cessation of operations which the permittee intends to last for thirty (30) days or more, or as soon as it is known to the permittee that an existing temporary cessation will last beyond thirty (30) days, the permittee shall provide written notice to the cabinet that such temporary cessation is anticipated. The notice shall state to what extent equipment will be removed from the site during the temporary cessation, and shall state the approximate date on which the permittee intends that operations will be resumed.
(2) Temporary cessation shall not relieve a permittee of the obligation to comply with 405 KAR 18:070, Section 1(1)(g) and the surface and groundwater monitoring requirements of 405 KAR 18:110, and the obligation to comply with all applicable conditions of the permit during the cessation.
(3) During temporary cessations, equipment and facilities necessary to environmental monitoring or to compliance with performance standards shall be made secure to the extent practicable.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony

is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment relates to the time constraints under which a permittee must notify the cabinet of plans to permanently or temporarily abandon an underground mine. In that respect, this amendment will affect all permittees of underground mines operating under permanent program requirements. As of June 30, 1987, there were 1,456 underground mines operating under the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, etc.), a portion of which were subject to underground mining standards. During Fiscal year 1987, the cabinet received 416 new permit application, and future permitting activities are anticipated to remain at about this same level.

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

1. First year: This amendment should result in neither savings nor additional costs to the affected entities.

2. Continuing costs or savings: This amendment should result in neither savings nor additional costs to the affected entities.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and this amendment will have no effect on competition.

(b) Reporting and paperwork requirements: This amendment relaxes the time frames under which a permittee must file a notice of mine-site abandonment. The material to be reported remains the same, but the time frames have been loosened.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment will neither require the cabinet to expend more moneys nor cause the cabinet financial savings.

2. Continuing costs or savings: This amendment will neither require the cabinet to expend more moneys nor cause the cabinet financial savings.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease cabinet costs.

(b) Reporting and paperwork requirements: This amendment does not impose any additional reporting or paperwork requirements on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to the promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that might conflict with, overlap, or duplicate this amendment.

(a) Necessity of proposed regulation if in conflict: Because no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Because no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 817.131 and 817.132, established by federal register 44 FR 14902 et seq., published on March 13, 1979.

2. State compliance standards. While current 405 KAR 18:010 requires the filing of a notice not less than 30 days prior to permanent abandonment of a mine, and 3 days notice prior to temporary abandonment, this amendment will allow permittees to file such notices anytime on or before the date of permanent or temporary abandonment.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate does not specify that the abandonment notice has to be filed a certain number of days prior to actual abandonment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This amendment will not impose stricter requirements or additional or different responsbilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose stricter standards or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 18:070. Water quality standards and effluent limitations.

RELATES TO: KRS 350.020, 350.090, 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 identifies water quality standards and effluent limitations which must be met, identifies the waters to which they apply and the periods of time in which they apply, requires water treatment for sediment control, and provides certain exemptions.

Section 1. Water Quality Standards and Effluent Limitations. (1)(a) Any discharges to surface waters of water from disturbed areas, underground workings, coal processing plants, and other surface facilities, shall be treated by passing through sedimentation ponds or other approved treatment facilities before leaving the permit area. The cabinet may grant exemptions from the requirement for sedimentation ponds or treatment facilities where the drainage is demonstrated by the permittee to meet the requirements of paragraph (g) of this subsection, and:

1. The drainage is from underground workings; or

2. The drainage is from surface areas which are adequately stabilized by vegetation or other protection against erosion so as to prevent the formation of rills and gullies; or

3. The disturbed surface drainage area is small; or

4. The drainage is a mixture of surface drainage meeting subparagraphs 2 or 3 of this paragraph and drainage from underground workings, and each type of drainage is demonstrated by the applicant to meet the requirements of paragraph (g) of this subsection prior to being mixed.

(b) Sedimentation ponds and other treatment facilities for surface drainage from disturbed areas shall be properly maintained and shall not be removed until all disturbed areas in the drainage area above the facility have been backfilled, graded and revegetated in accordance with this chapter and:

1. The vegetation has successfully survived two (2) years after the last augmented seeding [growing seasons];

2. The vegetation meets the ground cover standards of 405 KAR 16:200; and

3. The permittee has demonstrated to the satisfaction of the cabinet that retention of the pond or other treatment facility is not necessary in order to meet the requirements of paragraph (g) of this subsection.

(c) Sedimentation ponds and treatment facilities for discharges from underground workings shall be maintained until either the discharge continuously meets the requirements of paragraph (g) of this subsection without treatment or until the discharge has permanently ceased.

(d) For the purposes of this regulation only, disturbed area shall not include those areas affected by surface operations in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this chapter and the upstream area is not otherwise disturbed by the permittee.

(e) Sedimentation ponds required by this regulation shall be constructed in accordance with 405 KAR 18:090 and 401 KAR 18:100, in appropriate locations before beginning any underground mining activities in the affected drainage area.

(f) Where sedimentation ponds are located so as to receive drainage both from disturbed areas and from other areas not disturbed by current surface coal mining and reclamation operations, the mixed drainage shall meet the requirements of paragraph (g) of this subsection when the mixed drainage leaves the permit area.

(g) Discharges of water from areas disturbed by underground mining activities shall at all times be in compliance with all applicable federal and state water quality standards and either:

1. If the operation does not have a KPDES permit, [including] the effluent limitations guidelines of coal mining promulgated by the U.S. EPA in 40 CFR 434; or

2. The effluent limitations established by the KPDES permit for the operation.

(2) Adequate facilities shall be installed, operated, and maintained to treat any water discharged from disturbed areas or discharged from underground mine workings, when necessary to ensure that the discharge complies with all federal and state laws and regulations and the requirements of this regulation. Except where a lower pH is authorized by the KPDES permit for the operation, if the pH of water to be discharged from the disturbed area or mine is less than six (6.0), a neutralization process approved by the cabinet shall be installed, operated, and maintained.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time

before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect permittees of underground mines operating under permanent program requirements. As of June 30, 1987, there were 1,456 underground mines operating under the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, etc.), a portion of which were subject to underground mining standards. During Fiscal year 1987, the cabinet received 416 new permit application, and future permitting activities are anticipated to remain at about this same level.

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

1. First year: The revisions to Section 1(1)(b)1 will require that sedimentation ponds be retained for a longer period after mining that might be necessary under current requirements. The maintenance needs and water monitoring requirements of these ponds will result in additional costs to some permittees. The change in Section 1(1)(e) is purely clarification, and will neither save nor cost additional moneys. Revisions to Section 1(1)(g) and Section 2 will allow the cabinet to accept effluent limitations outside of the range that is currently permissible. This change has little effect now, but will cause substantial savings to some permittees in the future. These future benefits will be achieved when effluent relaxations for remining operations become a reality under the recently adopted Rahall Amendment to the Clean Water Act. Please note, however, that depending on the speed at which the Rahall Amendment is implemented, these savings may not become a reality during the first year of this amendment.

2. Continuing costs or savings: The cost and savings existing the first year will continue for subsequent years. However, the cabinet anticipates that in subsequent years more operations will be able to take advantage of the relaxations in effluent limitations emplaced through the Rahall Amendment.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The reduced effluent limitations forthcoming under the Rahall amendment will make the remining of abandoned mine lands a more attractive proposition. This will increase the quantity of "remined" coal in the market and make remining operations more competitive with the more traditional mining of undisturbed areas.

(b) Reporting and paperwork requirements: The cabinet anticipates that permit applicants will need to provide additional documentation to the Kentucky Division of Water in order to take advantage of Rahall's effluent relaxations. The exact reporting and paperwork requirements this would bring about are beyond the scope of this rulemaking.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional resources will probably be necessary in order to process effluent variances under the Rahall amendment; however, the scope of these additional resources is unknown at present.

2. Continuing costs or savings: Additional resources will probably be necessary in order to process effluent variances under the Rahall amendment; however, the scope of these additional resources is unknown at present.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs to the cabinet.

(b) Reporting and paperwork requirements: Additional paperwork may be necessary in processing effluent variances under the Rahall Amendment.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to the promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 817.46(b)(5), as revised by federal register 48 FR 44032 et seq., published September 26 1983; 30 CFR 817.49(a), as revised by federal register 48 FR 43994 et seq., published September 26, 1983; and 30 CFR 817.42, as revised by federal register 48 FR 43955 et seq., published September 26, 1983.

2. State compliance standards. The proposed amendment will impose three requirements: 1) that sedimentation ponds comply with the requirements for permanent and temporary impoundments, 2) that sedimentation ponds remain in place until vegetation on the reclaimed area has successfully survived for two years after the last augmented seeding, and 3) that discharges of water from areas disturbed by underground mining comply with the effluent limitations established in the KPDES permit, if

the operation does have a KPDES permit, and comply with the EPA requirements of 40 CFR 434 if the operation does not have a KPDES permit.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires the following: 1) that any impoundment comply with the requirements for permanent and temporary impoundments, 2) that sedimentation ponds remain in place at least until vegetation on the reclaimed area has successfully survived for two years after the last augmented seeding, and 3) that discharges of water from areas distubbed by underground mining comply with state and federal water quality laws and regulations and with the EPA effluent limitations set forth in 40 CFR Part 434.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This amendment will not impose stricter requirements or additional or different responsbilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose stricter standards or additional or different responsibilities or requirements.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation
and Enforcement
(Proposed Amendment)

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 groundwater 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 stream flow and to run off 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 protection [linings] shall be used to prevent erosion of the ditch. The following criteria shall [is to] be used unless the cabinet specifies otherwise:

1. Except when located in solid rock or when riprap or other nonerodible materials are used, [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 or other nonerodible materials 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 riprap 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 protected [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 run-off 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 run-off 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 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, 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 that became effective on February 4, 1986 shall apply to permits issued on or after July 1, 1986. Permittees conducting surface coal mining and reclamation operations under permits issued before that date shall comply with the requirements which preceded the 1986 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 May 5, 1986 [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.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to:

James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect permittees of underground mines operating under permanent program requirements. As of June 30, 1987, there were 1,456 underground mines operating in the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, etc.), a portion of which were subject to underground mining standards. During Fiscal Year 1987, the cabinet received 416 new permit application, and future permitting activities are anticipated to remain at about this same level. The amendment revises language to clarify the cabinet's interpretation of current regulatory provisions. More substantively, the amendment adds flexibility to the standards for selection of ditch lining material (riprap, etc.). Some permittees will take advantage of the added flexibility while others will not. Therefore, the amendment will actually affect only a portion of the entities identified above.

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

1. First year: For situations in which current 405 KAR 18:080 requires that diversion ditches be lined with riprap, the proposed amendment will allow for the use of either riprap or other nonerodible material. Under this change, permittees may be able to select materials more economical than riprap for use as ditch lining. If appropriate materials less expensive than riprap are available, the permittee will be able to use these at a savings to the operation.

2. Continuing costs or savings: The savings established during the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and the amendment will have no effect on competition.

(b) Reporting and paperwork requirements: This amendment will impose no additional reporting or paperwork requirements on the affected entities.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment will have no cost or savings impact on the cabinet.

2. Continuing costs or savings: This amendment will have no cost or savings impact on the cabinet.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease the cabinet's costs.

(b) Reporting and paperwork requirements: This amendment will not impose any additional reporting or paperwork requirements on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: The amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to implementation of the changes other than by promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 817.43, as revised by federal register 48 FR 43955 et seq., published September 26, 1983.

2. State compliance standards. This amendment allows for the use of riprap or other nonerodible material to line diversion ditches that are not in solid rock and that have a peak design velocity of 5 feet per second or greater.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that diversion ditches comply with any design criteria specified by the regulatory authority to meet the requirements of 30 CFR 817.43. 30 CFR 817.43 establishes the following protection standards that diversion ditches must meet: diversions must be stable; they must minimize adverse impacts to the hydrologic balance within the permit and adjacent area; they must prevent material damage outside the permit area; they must assure the safety of the public; and they must prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed amendment complies with the direction of the federal mandate. To meet the federally mandated protection requirements, existing 405 KAR 18:080 sets forth design criteria, one of which this amendment proposes to revise. The amendment establishes design standards that are neither stricter than the mandate nor impose additional or different responsibilities or requirements than the mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. As noted above, the proposed amendment complies with the

direction of the federal mandate. To meet the federally mandated protection requirements for diversions, existing 405 KAR 18:080 sets forth design criteria, one of which this amendment proposes to revise.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 18:100. Permanent and temporary impoundments.

RELATES TO: KRS 350.100, 350.151, 350.420, 350.455, 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 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 mining activities. This regulation sets forth requirements for inspection and maintenance of temporary and permanent impoundments, and specific criteria for impoundments which are to be retained as permanent facilities after completion of underground mining activities.

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments.

(1) Impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), shall comply with the requirements of 30 CFR 77.216 and this regulation. The plan required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall also be submitted to the cabinet as part of the permit application.

(2) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this regulation using current, prudent engineering practices, and any design criteria established by the cabinet. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a) Permanent and temporary impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 18:160.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirement of this regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 18:190, Section 4.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments which have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent dams as defined in KRS 151.100 shall also comply with 405 KAR 7:040, Section 5, and with 401 KAR 4:030.

(7) Impoundments shall include a combination of principal and emergency spillways which shall

be designed and constructed to safely pass the design precipitation event specified below, unless the cabinet requires a larger event.

(a) Except as provided in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 CFR 77.216(a), shall pass the:

1. Twenty-five (25) year, twenty-four (24) hour precipitation event if it is a temporary structure; or

2. The fifty (50) year, twenty-four (24) hour precipitation event if it is a permanent structure.

(b) Class A structures that do meet the criteria of MSHA, 30 CFR 77.216(a), shall pass the 100 year, twenty-four (24) hour precipitation event.

(c) Class B and C structures and all permanent dams as defined in KRS 151.100 shall comply with the criteria established in 401 KAR 4:030.

(8) Class A impoundments not meeting the criteria of MSHA, 30 CFR 77.216(a), may use a single spillway (if allowed pursuant to subsection (6) of this section) if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(9) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(10) Engineer inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified registered professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

(c) A copy of the report shall be retained at or near the mine site.

(11) Operator examinations. Impoundments subject to 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Other impoundments shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations are to be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional examinations within a quarter are required. Reports of the examinations are to be retained at or near the minesite.

(12) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundments shall promptly inform the cabinet of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the cabinet shall be notified immediately. The cabinet shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon the following demonstration:

(1) The size and configuration of such impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

[Section 1. General. (1) Permanent impoundments are prohibited unless authorized by the cabinet, upon the basis of the following demonstration:]

[(a) The quality of the impounded water shall be suitable, on a permanent basis, for its intended use, and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water quality standards established pursuant to applicable state and federal laws.]

[(b) The level of water shall be sufficiently stable to support the intended use.]

[(c) Adequate safety and access to the impounded water shall be provided for proposed water users.]

[(d) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.]

[(e) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L. 83-566 (16 USC 1006). Requirements for impoundments that meet the size or other criteria of the MSHA, 30 CFR 77.216(a) are contained in the U.S. Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs," June 1976. Requirements for impoundments that do not meet

the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Practice Standard 378, "Ponds," October 1978.]

[(f) The size of the impoundment is adequate for its intended purposes.]

[(g) The impoundment will be suitable for its intended purposes and will be consistent with the approved postmining land use.]

[(2) Temporary impoundments of water in which the water is impounded in a dam shall meet the requirements of 405 KAR 18:090, Section 5.]

[(3) Excavations that will impound water during or after the mining operation shall have perimeter slopes that are stable and shall not be steeper than 1v:2h. Where surface run-off enters the impoundment area, the side slope shall be protected against erosion.]

[(4) Slope protection shall be provided to minimize surface erosion at the site and sediment control measures shall be required where necessary to reduce the sediment leaving the site.]

[Section 2. Dams and Embankments. (1) All dams and embankments of temporary and permanent impoundments, and the surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of 405 KAR 18:200 immediately after the embankment is completed, provided that the active, upstream face of the dam or embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of 405 KAR 18:190, Section 4 and 405 KAR 18:200.]

[(2) All dams and embankments meeting or exceeding the size or other criteria of 30 CFR 77.216(a) shall be routinely inspected in accordance with 30 CFR 77.216-3 by a qualified registered professional engineer, by someone under the supervision of a qualified registered professional engineer, or by a person approved by MSHA for such inspections.]

[(3) All dams and embankments shall be routinely maintained during the mining operations. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than material such as mulch or dry vegetation used for surface stability, shall be removed and all other appropriate maintenance procedures followed.]

[(4) All dams and embankments that meet or exceed the size or other criteria of 30 CFR 77.216(a) shall be certified to the cabinet by a qualified registered professional engineer immediately after construction as having been constructed in accordance with the design approved by the cabinet and annually thereafter as having been maintained to comply with the requirements of this regulation. All dams and embankments that do not meet the size or other criteria of 30 CFR 77.216(a) shall be certified by a registered professional engineer immediately after construction, but need not be certified annually thereafter. Certification reports shall include statements on:]

[(a) Existing and required monitoring procedures and instrumentation;]

[(b) The design depth and elevation of any impounded waters at the time of the initial certification report or the average and maximum depths and elevations of any impounded waters over the past year for the annual certification reports;]

[(c) Existing storage capacity of the dam or embankment;]

[(d) Any fires occurring in the construction material up to the date of the initial certification or over the past year for the annual certification reports; and]

[(e) Any other aspects of the dam or embankment affecting stability.]

[(5) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the cabinet and shall comply with the requirements of this regulation. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the cabinet shall approve the plans before modification begins.]

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect permittees of underground mines operating under permanent program requirements. As of June 30, 1987, there were 1,456 underground mines operating in the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, etc.), a portion of which were subject to underground mining standards. During Fiscal Year 1987, the cabinet received 416 new permit application, and future permitting activities are anticipated to remain at about this same level.

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

1. First year: The design storms required for Class A impoundments will be reduced under this

amendment. Other design criteria are also being relaxed. These changes will often result in smaller impoundments and design alternatives that may be more economical to the permittee. In this respect, the amendment will result in a savings to the permittee. Some operations that have not yet constructed one or more of their impoundments may wish to redesign the structures under the criteria of this amendment. Those wishing to redesign their structures will need to do so through the permit revision process. Additional costs will be associated with the preparation and processing of a permit revision; however, redesign of impoundments is optional, not mandatory. Those impoundments approved under the current regulation will not need to be redesigned for compliance with this amendment. The amendment will establish additional inspection and certification requirements for permanent and temporary impoundments. Additional costs will be attendant to these requirements.

2. Continuing costs or savings: The savings established during the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There will be no additional factors increasing or decreasing costs, and this amendment will not affect competition.

(b) Reporting and paperwork requirements: This amendment will establish additional inspection and certification requirements for permanent and temporary impoundments. This will increase reporting and paperwork requirements imposed on the permittee.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Processing of the permit revisions discussed in item (1)(a)1 above will result in additional expenses to the cabinet.

2. Continuing costs or savings: In order to take full advantage of the new design criteria, existing permittees will be filing their permit revisions soon after this amendment is adopted. Therefore, the costs incurred in the first year should decrease in subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs to the cabinet.

(b) Reporting and paperwork requirements: Additional paperwork will be necessary in order to process the permit revisions discussed in item (2)(a)1 above.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to implementation of the changes other than by promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: All of the text of this amendment is underlined, indicating it is all new to the regulation. However, many of the proposed requirements are already in place under existing 405 KAR 18:100, in the documents referenced in 405 KAR 18:100 Section 1(1)(e), or through a cross reference to 405 KAR 18:090 Section 5 in current 405 KAR 18:100 Section 1(2). The design criteria specified in this amendment are necessary for consistency with impoundment requirements of the Kentucky Division of Water and the Mine Safety and Health Administration.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 817.49, as revised by federal register 48 FR 43994 et seq., published September 26, 1983.

2. State compliance standards. This amendment contains standards addressing the following topics dealing with permanent and temporary impoundments: general construction requirements, stability requirements, freeboard standards, foundation requirements, storm-event design, engineer and operator inspections, emergency procedures for hazardous conditions, and criteria for approval of permanent impoundments.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate addresses the same topics as this amendment; however, with respect to design criteria, this amendment provides substance to clarify federal ambiguity and to comport with impoundment requirements of the Kentucky Division of Water and the Mine Safety and Health Administration.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate at 30 CFR 817.49(a)(2) authorizes the design criteria established by this amendment. In light of that provision, this amendment does not impose stricter requirements than those authorized by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. As noted above, 30 CFR 817.49(1)(2) authorizes the design criteria set forth in this amendment. The design criteria set forth in the amendment are necessary for consistency with impoundment requirements of the Kentucky Division of Water and the Mine Safety and Health Administration.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 18:110. Surface and groundwater monitoring.

RELATES TO: KRS 350.100, 350.151, 350.405, 350.420, 350.465,
PURSUANT TO: KRS Chapter 13A, 350.028, 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 the monitoring and reporting of surface water quality and quantity, and groundwater levels and quality and aquifer conditions, and the required duration of such monitoring.

Section 1. General Requirements. (1) Surface and groundwater monitoring shall be conducted in a manner acceptable to the cabinet and utilize, at a minimum, a sufficient number of appropriately located groundwater monitoring wells (or springs), surface water monitoring stations, and quantity and quality parameters to demonstrate whether:

(a) The mining and reclamation operations are conducted in such a manner as to minimize disturbances to the hydrologic balance within the permit area and adjacent area pursuant to 405 KAR 18:060;

(b) The mining operation is meeting applicable effluent limitations and stream standards as required by 405 KAR 18:060, Section 1(3);

(c) Reclamation as required by KAR Title 405 is being accomplished and the operation is preventing material damage to the hydrologic balance in the cumulative impact area pursuant to 405 KAR 8:010, Section 14(2) and (3);

(d) The mining operation meets water quality criteria for bond release pursuant to 405 KAR 10:040.

(2) Surface and groundwater monitoring shall be coordinated with baseline data collection by conducting surface and groundwater monitoring at locations where baseline data was collected, or by other appropriate data collection and analysis procedures which will allow a comparison of baseline conditions with during-mining and postmining conditions.

(3) Equipment, structures, monitoring wells, or other facilities used to monitor surface and groundwater quantity and quality shall be properly installed, maintained, and operated, and shall be removed or otherwise properly disposed of, including sealing of monitoring wells, when no longer needed; except that monitoring wells may be transferred to the surface owner of lands where the well is located, pursuant to 405 KAR 18:060, Section 6.

(4) Except as provided under subsection (7) of this section:

(a) Surface and groundwater monitoring data collection shall begin during the calendar quarter [at the time] of initial disturbance and continue during mining and reclamation until final bond release.

(b) Surface and groundwater monitoring data shall be collected once each calendar quarter, with no two (2) samples collected closer than thirty (30) days apart. The results of the quarterly data collection must be submitted to the appropriate regional office on or before the end of the first month following the calendar quarter in which the data were collected. [quarterly and the results submitted to the cabinet within one (1) month after data collection.]

(5) If the results of any data collection indicate noncompliance with a permit condition, the permittee shall promptly notify the cabinet in writing and shall take immediate corrective actions to return the operations to compliance with all permit conditions.

(6) The cabinet may require the installation of additional groundwater monitoring wells and surface water monitoring stations, the collection of additional quantity and quality parameters, and more frequent data collection and submittal if additional information is needed to meet the requirements of subsection (1) of this section.

(7)(a) Pursuant to an application for a revision of a permit, the cabinet may approve modifications of the monitoring requirements for surface and groundwater, except those required by the KPDES permit, including the parameters covered and the sampling frequency, if the permittee demonstrates to the cabint's satisfaction, using the monitoring data obtained under this regulation, that:

1. The operation has minimized disturbance to the hydologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support the postmining land uses; and

2. If approval of cessation of monitoring is sought, monitoring is no longer necessary to achieve the purposes of this regulation.

(b) However, the cabinet shall not approve cessation of monitoring until at least five (5) years after completion of active mining on the permit, and shall not approve reduction of sampling frequency to less than quarterly until at least two (2) years after completion of active mining on the permit.

Section 2. Groundwater Monitoring. (1) Groundwater monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:040, Section 32(4).

(2) At a minimum, groundwater monitoring shall include the parameters of:

(a) Water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees Centigrade; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.

(3) If the applicant can demonstrate to the satisfaction of the cabinet by use of the baseline geologic or hydrologic information, the mining and reclamation plan, and the determination of probable hydrologic consequences that a particular water transmitting zone in the proposed permit and adjacent area is not one which serves as an aquifer which significantly ensures the

hydrologic balance anywhere within the cumulative impact area, then monitoring of that water transmitting zone may be waived by the cabinet.

Section 3. Surface Water Monitoring. (1) Surface water monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:040, Section 32(4).

(2) At a minimum, surface water monitoring shall include the parameters of:

(a) Discharge; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees Centigrade; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(3) Surface water monitoring for KPDES.

(a) Monitoring of point source discharges under a KPDES permit shall be conducted in accordance with 40 CFR Parts 122, 123, and 434 and in accordance with the requirements of the KPDES permit. The permittee shall submit a copy of the KPDES monitoring results to the cabinet on the time schedule and in the format required by the KPDES permit. The permittee shall report all noncompliances with the KPDES permit to the cabinet in the manner required by the KPDES permit.

(b) Compliance with KPDES monitoring requirements shall not relieve the permittee of the obligation to comply with other surface and groundwater monitoring requirements of this regulation.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect permittees of underground mines operating under permanent program requirements. As of June 30, 1987, there were 1,456 underground mines operating in the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, etc.), a portion of which were subject to underground mining standards. During Fiscal Year 1987, the cabinet received 416 new permit application, and future permitting activities are anticipated to remain at about this same level. The amendment revises language to clarify the cabinet's interpretation of current regulatory provisions and to add a provision authorizing the use of springs as groundwater monitoring stations. More substantively, the amendment adds a provision that will allow the cabinet to approve reductions in surface and groundwater monitoring. The authorized reductions will apply to parameters monitored as well as the frequency of sampling. Monitoring under the KPDES program will not be eligible for these reductions. Reductions in surface and groundwater monitoring will be difficult to justify, and very few permittees will be able to take advantage of these regulatory relaxations. Similarly, few permittees will be able to utilize springs rather than wells as groundwater monitoring stations. In light of this, the amendment will actually affect only a small portion of the entities identified above.

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

1. First year: Use of springs as groundwater monitoring stations will require prior cabinet approval in the original permit application or, if justifiable, through a permit revision. Any reductions in surface or groundwater monitoring will have to be processed through as a permit revision. The costs incurred in getting a permit revision approved will be offset to some extent by the financial savings of reduced monitoring or a spring sampling program. Should the permittee determine that the revision costs do not outweigh the benefits of a revised monitoring program, monitoring can continue under the already approved plan.

2. Continuing costs or savings: The costs/savings established during the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and the amendment will have no affect on competition.

(b) Reporting and paperwork requirements: A reduction in surface or groundwater monitoring will bring with it a reduction in reporting and paperwork, since monitoring reports will only be filed for the periods and parameters actually monitored.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment will cause a few more revision applications to be filed with the cabinet (392 revisions were processed in Fiscal Year 1987). Cost increases will be incurred in processing the additional revisions.

2. Continuing costs or savings: The cost factors established during the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs to the cabinet.

(b) Reporting and paperwork requirements: Processing the permit revisions discussed above

will impose additional paperwork on the cabinet.
(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternative methods of implementing these changes other than by promulgation of this amendment.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.
(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.
(6) Any additional information or comments: No additional information or comments.
TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 784.14(h)(2), as revised by federal register 48 FR 43956 et seq., published September 26, 1983, and 30 CFR 817.41, as revised by federal register 48 FR 43956 et seq., published September 26, 1983.

2. State compliance standards. This amendment will allow springs to be used as groundwater monitoring stations; will add specificity to the requirement for quarterly surface and groundwater monitoring; will establish a provision allowing for a reduction in surface and groundwater monitoring under certain limited circumstances; and will clarify that, in justifying a groundwater monitoring waiver for a particular water transmitting zone, the applicant must demonstrate that the zone is not an aquifer that ensures the hydrologic balance anywhere within the cumulative impact area.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate does not restrict groundwater monitoring to wells, and thus would allow for the use of springs for groundwater monitoring. The federal mandate also requires the submitting of groundwater monitoring data to the regulatory authority every three months, or more frequently as prescribed by the regulatory authority. The mandate also contains a provision allowing the regulatory authority to approve a reduction in non-KPDES hydrologic monitoring (including parameters monitored and sampling frequency) under certain circumstances. Also, the mandate applies the "anywhere test" in determining if groundwater monitoring of a particular rock unit need not be conducted.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Some of the wording of this amendment is different than that contained in the federal mandate, but the requirements imposed are not stricter.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Where language in this amendment differs from that contained in the federal mandate, the deviation is needed for clarity.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 18:120. Use of explosives.

RELATES TO: KRS 350.151, 350.430
PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 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 specific requirements for the use of explosives for surface blasting, including qualified supervision of blasting, preblasting surveys, warning signals, restrictions on timing and location of blasting, limitations on airblast and ground vibration, seismographic measurements, and records of surface blasting operations.

Section 1. General Requirements. (1) This regulation applies only to surface blasting activities incident to underground mining, including but not limited to, initial rounds of slopes and shafts.
(2) Each permittee and each person who conducts blasting operations shall comply with all applicable local, state, and federal laws and regulations in the use of explosives.
(3)[(a) During the time before twelve (12) months after the approval of Kentucky's blaster certification program by OSM, all surface blasting operations shall be conducted under the supervision of a blaster licensed by the Kentucky Department of Mines and Minerals by experienced, trained, and competent persons who understand the hazards involved. During this time a licensed blaster and at least one (1) other person shall be present at the firing of a blast.]
[(b) On and after twelve (12) months from the approval of Kentucky's blasting certification program by OSM,] Each permittee shall have all surface blasting operations conducted under the direction of a blaster certified in accordance with 405 KAR 7:070. [On and after this date,] A certified blaster and at least one (1) other

person shall be present at the firing of a blast.

[(c)] Persons responsible for blasting operations at a blasting site shall be familiar with the blasting plan and site-specific performance standards.

(4)(a) An anticipated blast design shall be submitted if blasting operations will be conducted within:

1. 1,000 feet of any building used as a dwelling; public building; school; church; or commercial, community, or institutional building outside the areas affected by surface operations and facilities; or

2. 500 feet of an active or abandoned underground mine.

(b) The blast design shall [may] be presented as part of the permit application or shall be submitted to the department's appropriate regional office at least thirty (30) days prior to initiation of the blast [at a time before the blast approved by the cabinet].

(c) The blast design shall contain sketches of the drill patterns, delay periods, and decking; shall indicate the types and amounts of explosives to be used, critical dimensions, and the locations of structures to be protected; shall include a general description of structures to be protected; and shall contain a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground vibration standards in this regulation.

(d) The blast design shall be prepared and signed by a certified blaster.

(e) The cabinet may require changes to the design submitted in order to ensure compliance with KRS Chapter 350; SMCRA; and Title 405, Chapters 7 through 24.

Section 2. Preblasting Survey. (1) At least thirty (30) days before initiation of blasting, the permittee shall notify, in writing, all residents or owners of dwellings or other structures located within one-half (1/2) mile of the areas affected by surface operations and facilities how to request a preblasting survey in accordance with subsection (2) of this section.

(2) A resident or owner of a dwelling or other structure within one-half (1/2) mile of any part of the areas affected by surface operations and facilities may request a preblasting survey. This request shall be made in writing directly to the permittee or to the cabinet which shall promptly notify the permittee. The permittee shall promptly conduct a preblasting survey of the dwelling or structure. If a structure is renovated, modified, or added to subsequent to a preblasting survey, then, upon request a survey of such additions and renovations shall be performed in accordance with this section.

(3) The survey shall determine the condition of the dwelling or structure and document any preblasting damage and other physical conditions that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface condition and readily available data unless additional data are specifically required by the cabinet.

(4) A written report of the survey shall be promptly prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting plan to prevent damage. If the resident or structure owner or his representative accompanies the surveyor, the report shall contain the name of such person. Copies of the report shall be promptly provided to the person requesting the survey and to the cabinet. If the person requesting the survey disagrees with the results of the survey, he or she may submit, in writing to both the permittee and the cabinet, a detailed description of the specific areas of disagreement. The cabinet may require additional measures to ensure that adequate and accurate information is included in the preblasting survey and to ensure compliance with the requirements of this regulation.

(5) Any surveys requested more than ten (10) days before the planned initiation of blasting shall be completed by the permittee before the initiation of blasting.

Section 3. Surface Blasting Requirements. (1) General requirements.

(a) The permittee shall notify, in writing, each residence [all residents and owners of dwellings or other structures] within one-half (1/2) mile of the areas affected by surface operations and facilities, the appropriate department regional office, and local governments and public utilities of the proposed times and locations of blasting operations and the characters, patterns, and meanings of the warning and all-clear signals. Such notice shall be served no less than twenty-four (24) hours and no more than thirty (30) days before blasting will occur.

(b) All blasting shall be conducted between sunrise and sunset. The cabinet may specify more restrictive time periods based on public requests or other relevant information and according to the need to adequately protect the public from adverse noise and other impacts. Blasting may, however, be conducted between sunset and sunrise if:

1. A blast that has been prepared during the day must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard could result that cannot be adequately mitigated;

2. Prior approval for conducting the blasting between sunset and sunrise is obtained from the Kentucky Department of Mines and Minerals; and

[3. In addition to the required warning signals, oral notices are provided to all persons within one-half (1/2) mile of the blasting site; and]

3. [4.] A complete written report of blasting at night is filed by the permittee with the cabinet not later than three (3) days after the night blasting, not including Saturdays, Sundays, or legal holidays. The report shall include a detailed description of the reasons for the delay in blasting including why the blasting could not be held over to the next day, identification of the time at which the blast was actually conducted, a description of the warning notices given, and a copy of the blast record required by Section 5 of this regulation.

(c) Unscheduled blasts may be conducted only where public or operator health and safety so require and for emergency blasting actions. When a permittee conducts an unscheduled blast, the

permittee, using audible signals, shall notify all persons within one-half (1/2) mile of the blasting site and document the reason for the unscheduled blast in accordance with Section 5(20) of this regulation.

(d) The use of a charge weight of explosives in excess of 40,000 pounds in any blast shall not occur without a valid permit for such blasting from the Kentucky Department of Mines and Minerals. Such a permit shall be present at the blast site while such blasting is being conducted.

(2) Warnings. Warning and all-clear signals of different character or pattern that are audible within a range of one-half (1/2) mile from the point of the blast shall be given. Each person within the areas affected by surface operations and facilities and each person who resides or regularly works within one-half (1/2) mile of the areas affected by surface operations and facilities shall be notified of the meanings of the signals as identified in the blasting notification required in subsection (1) of this section through appropriate communications. These notifications shall be periodically delivered or otherwise communicated to such persons in a manner which can reasonably be expected to inform such persons of the meanings of the signals. Delivery or other appropriate communication of the meanings of such signals to the head of a household or to the person in charge of a place of business shall constitute sufficient notification of the meanings of such signals to all persons at such household or place of business. Each permittee shall maintain signs in accordance with 405 KAR 18:030, Section 6.

(3) Access control. Access to the blasting area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting until the blaster has reasonably determined:

(a) That no unusual circumstances, such as imminent slides or undetonated charges, exist; and

(b) That access to and travel in or through the blasting area can be safely resumed.

(4)(a) Airblast. Airblast shall be controlled so that it does not exceed the values specified in Appendix A of this regulation at any dwelling; public building; school; church; or commercial, community, or institutional building outside the areas affected by surface operations and facilities except as provided in subsection (8) of this section.

(b) In all cases except those involving the use of C-weighted, slow-response devices, the measuring systems used shall have a flat frequency response of at least 200 Hz at the upper end. The C-weighted shall be measured with a Type 1 sound level meter that meets the standard American National Standards Institute (ANSI) S1.4 1971 specifications.

(c) If necessary to prevent damage, the cabinet shall specify lower maximum allowable airblast levels than those in Appendix A of this regulation for use in the vicinity of a specific blasting operation.

(d)1. To evaluate compliance with the airblast standards of this regulation, throughout surface blasting operations the permittee shall periodically monitor [conduct periodic monitoring to ensure] compliance with the airblast standards.

2. Monitoring pursuant to this paragraph shall be deemed "periodic" if at least three (3) consecutive blasts are monitored one (1) time during the period of January through June and one (1) time during the period of July through December; provided however:

a. The cabinet may approve or require an alternative frequency if deemed appropriate based on site conditions, the anticipated blast design, the proposed blasting plan, and any other pertinent information available to the cabinet. A plan for less frequent airblast monitoring shall be deemed approved if the plan is specified as a condition of permit issuance or is specified in the approved permit application and not modified by a condition of permit issuance. A plan for more frequent airblast monitoring shall be established in the approved permit application, as a condition of permit issuance, or after permit issuance in accordance with subparagraph 3 of this paragraph.

b. If detonation of explosives did not occur during the designated monitoring period, airblast monitoring need not be conducted during that period.

3. Subsequent to permit issuance, the cabinet may require airblast measurements of any or all blasts and may specify the locations of such measurements.

4. The results of all airblast monitoring shall be recorded in accordance with Section 5 of this regulation.

(5) Flyrock. Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting site [vicinity] more than half the distance to the nearest dwelling; public building; school; church; commercial, community, or institutional building; or any occupied structure and in no case beyond the boundary of the areas affected by surface operations and facilities, or beyond the area of regulated access required under subsection (3) of this section.

(6) Prevention of adverse impacts. Blasting shall be conducted to prevent injury to persons; damage to public and private properties outside the areas affected by surface operations and facilities; adverse impacts on any underground mine; changes in the courses, channels, and availability of surface waters outside the areas affected by surface operations and facilities; and alterations of the ground water flow systems and ground water availability outside the areas affected by surface operations and facilities.

(7) Ground vibration.

(a) General. In all blasting operations except as otherwise authorized by subsection (8) of this section, the maximum ground vibration shall not exceed the values approved in the blasting plan required under 405 KAR 8:040. The maximum ground vibration at the location of any dwelling; public building; school; church; or commercial, community, or institutional building outside the areas affected by surface operations and facilities shall be established in accordance with either the maximum peak particle velocity limits of paragraph (b) of this subsection, in accordance with the scale-distance equations of paragraph (c) of this subsection, in accordance with the blasting-level equations of paragraph (d) of this subsection, or by the cabinet pursuant to paragraph (e) of this subsection. All other structures in the vicinity of the blasting area, such as water towers, pipelines, and other utilities; tunnels; dams; impoundments; and

underground mines shall be protected from damage by establishment of a maximum allowable limit on the ground vibration proposed by the applicant in the blasting plan and approved by the cabinet.

(b) Maximum peak particle velocity. The maximum ground vibration shall not exceed the limits established in Appendix B of this regulation at the location of any dwelling; public building; school; church; or commercial, community, or institutional building outside the areas affected by surface operations and facilities. Seismographic records shall be recorded for each blast.

(c) Scale-distance equations.

1. A permittee may use the scale-distance equations of Appendix C of this regulation to determine the allowable charge weight of explosives to be detonated within any eight (8) millisecond period without seismic monitoring.

2. The development of a modified scale-distance factor may be authorized by the cabinet based on a written request by the permittee supported by seismographic records of blasting at the mine site. The modified scale distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the limits established in Appendix B of this regulation at a ninety-five (95) percent confidence level.

(d) Blasting-level equations. A permittee may use the ground vibration limits calculated from the blasting-level equations in Appendix D of this regulation to determine the maximum allowable ground vibration. If the blasting-level equations are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominate frequency contained in the blasting records shall be approved by the cabinet before application of this alternative blasting criterion.

(e) The maximum allowable ground vibration shall be reduced by the cabinet beyond the limits of this subsection if the cabinet determines that lower limits are necessary to provide damage protection and ensure compliance with subsection (6) of this section.

(8) The maximum airblast and ground vibration standards of this section shall not apply at the following locations:

(a) At structures owned by the permittee and not leased to another party; and

(b) At structures owned by the permittee and leased to another party, if a written waiver by the lessee is submitted to the cabinet prior to blasting.

Section 4. Seismographic Measurements. (1) The maximum peak particle velocity shall be recorded as either the largest of the peak particle velocities measured in three (3) mutually perpendicular directions or the vector sum thereof.

(2) The cabinet may require a permittee to conduct seismic monitoring of any or all blasts and may specify the location at which such measurements are taken and the degree of detail necessary in the measurement.

Section 5. Records of Blasting Operations. A record of each blast, including any required seismograph reports, shall be retained for at least five (5) years and shall be available for inspection by the cabinet and the public on request. The record shall contain the following data:

(1) Name of the permittee.

(2) Location, date, and time of the blast.

(3) Name, signature, certification number, and license number of the blaster in charge of the blast.

(4) Identification of and direction and distance, in feet, from the nearest blast hole to the nearest dwelling; public building; school; church; or commercial, community, or institutional building outside the permit area, except those described in Section 4(8) of this regulation.

(5) Weather conditions, including those which may cause possible adverse blasting effects.

(6) Type of material blasted.

(7) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern.

(8) Diameter and depth of holes.

(9) Types of explosives used.

(10) Total weight of explosives used.

(11) Total weight of explosives used per hole.

(12) Maximum weight of explosives detonated within any eight (8) millisecond period.

(13) Maximum number of holes detonated within any eight (8) millisecond period.

(14) Type of initiation system.

(15) Type of circuit.

(16) Type and length of stemming.

(17) Mats or other protection used.

(18) Type of delay detonator and delay periods used.

(19) Seismographic and airblast records, if used, which include for each record:

(a) Type of instrument, sensitivity, and either calibration signal or certification of annual calibration;

(b) Exact location of instrument and the date of, time of, and distance from the blast;

(c) For seismographic records, the actual seismographic record.

(d) Name of the person and firm taking the reading;

(e) Name of the person and firm analyzing the seismographic record; and

(f) As applicable, vibration and airblast levels recorded.

(20) Reasons and conditions for each unscheduled blast.

Appendix A of 405 KAR 18:120
Airblast Limitations

Lower frequency limit of measuring system in Hz (±3dB)	Maximum level in dB
*0.1 Hz or lower - flat response	134 peak
2 Hz or lower - flat response	133 peak
6 Hz or lower - flat response	129 peak
*C-weighted, slow response	105 peak dBC

*These measuring systems shall be used only when approved by the cabinet.

Appendix B of 405 KAR 18:120
Peak Particle Velocity Limits

Distance from the blasting site in feet	Maximum allowable peak particle velocity for ground vibration in inches per second
0 to 300	1.25
301 to 5,000	1.00
5,001 and beyond	0.75

Appendix C of 405 KAR 18:120
Scale-distance Equations

Distance (D) from the blasting site in feet	Scale-distance equation
0 to 300	$W = (D/50)^2$
301 to 5,000	$W = (D/55)^2$
5,001 and beyond	$W = (D/65)^2$

where: W = the maximum weight of explosives that can be detonated within any eight (8) millisecond period.
where: D = the distance, in feet, from the blasting site to the nearest protected structure.

Appendix D of 405 KAR 18:120
Blasting-level Equations

Blasting vibration frequency	Blasting-level equation
Hz < 4	$V = 0.19\ Hz^{0.9904}$
4 ≤ Hz ≤ 11	V = 0.75
11 < Hz < 30	$V = 0.0719\ Hz^{0.9776}$
Hz ≥ 30	V = 2.00

where: Hz = the blast vibration frequency in hertz.
where: V = the maximum allowable particle velocity in inches per second.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect permittees of underground mines operating under permanent program requirements. As of June 30, 1987, there were 1,456 underground mines operating in the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, etc.), a portion of which were subject to underground mining standards. During Fiscal Year 1987, the cabinet received 416 new permit application, and future permitting activities are anticipated to remain at about this same level.

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

1. First year: This amendment shortens the list of persons who must be provided with written, preblast notifications (i.e., notices identifying blasting times and locations and explaining warning and all-clear signals). Shortening this list will result in distributional savings (e.g., postage) to the permittee. Also, the amendment adds specificity to the requirement for "periodic" airblast monitoring. If a permit has already been issued requiring airblast monitoring more frequent than that specified in this amendment, the permittee may be able to file a permit revision to lessen the monitoring frequency. If a permittee can lessen the frequency of airblast monitoring under the specificity of this amendment, moneys will be saved. The cabinet does not anticipate that the other changes in this amendment will have any cost or savings effect on the regulated entities.

2. Continuing costs or savings: The savings established during the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and this amendment will not affect competition.

(b) Reporting and paperwork requirements: As noted above, this amendment will shorten the list of persons who must receive written preblast notifications. This change will decrease some of the paperwork of the affected entities. Also, a blast design must be filed with the cabinet whenever blasting is to be conducted within 500 feet of an underground mine or within 1000 feet of a dwelling; public building; school; church; or commercial, community, or institutional building outside the permit area. Under current 405 KAR 18:120, this blast design must either be included in the permit application or be filed "at a time before the blast approved by the cabinet." (id., Section 1(4)(b).) This amendment will require that the blast design be included in the permit application or submitted to DSMRE's regional office at least 30 days prior to the blast.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The amendment's specificity in the requirements for periodic airblast monitoring will cause some permittees to file permit revisions to reduce the monitoring frequency imposed under their current permits.

The processing of these permit revisions will be done at additional expense to the cabinet.

2. Continuing costs or savings: In order to take advantage of less frequent airblast monitoring requirements as soon as possible, existing permittees will be filing their permit revisions soon after this amendment is adopted. Therefore, the costs incurred in the first year should decrease in subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs to the cabinet.

(b) Reporting and paperwork requirements: Processing the permit revisions discussed above will impose additional paperwork on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternative methods of implementing these changes other than by promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 817.61, as revised by federal register 48 FR 9788 et seq., published March 8, 1983; 30 CFR 817.64, as revised by federal register 48 FR 9788 et seq., published March 8, 1983; and 30 CFR 817.67, as revised by federal register 48 FR 9788 et seq., published March 8, 1983.

2. State compliance standards. This amendment requires that blast designs either be included in the permit application or be submitted to DSMRE's appropriate regional office at leat 30 days before the blast. The amendment also elaborates on what constitutes "periodic" airblast monitoring. Moreover, the amendment replaces the requirement to provide a written preblast notice to "all residents and owners of dwellings or other structures within one-half mile of the areas affected by surface operations and facilities" with a requirement to distribute the notice to each resident within the one-half mile distance. Additionally the amendment deletes the requirement that oral notices be provided to all persons within one-half mile of the blasting site when blasting is to be conducted at night. Use of audible warning and all-clear signals for all blasting, nighttime and otherwise, will remain in the regulation.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that blast designs either be included in the permit application or be submitted at a time before the blast approved by the regulatory authority. The mandate requires distribution of the preblast notice to residents within one-half mile of the blast site. The mandate also requires that blasting be conducted to prevent injury to persons and damage to public or private property outside the permit area, and to assure compliance with these standards, the mandate sets airblast limits and dictates that airblast be "periodically" monitored. The mandate also requires the use of audible signals to notify residents within one-half mile of the blast site for nighttime blasting, but it does not require the use of oral notice.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment establishes a uniform time criteria for the submission of blast designs, whereas the federal mandate simply states that blast designs can be submitted at a time before the blast approved by the cabinet. The amendment also replaces the vague reference to "periodic" airblast monitoring with specific standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Where the amendment deviates from federal language, the reason is to remove ambiguity. The standards established are not more stringent than the federal mandate, they are simply less ambiguous.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 18:150. Disposal of noncoal mine waste [other than coal processing waste, soil or rock].

RELATES TO: KRS 350.020, 350.090, 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 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 the storage and disposal of wastes other than coal mine [processing] waste, soil or rock.

Section 1. Storage and Disposal. (1) Storage. Noncoal mine wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, timber and other combustibles generated during underground mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface run-off do not degrade surface or groundwater, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(2) Disposal. Final disposal of such noncoal mine wastes shall be in a designated disposal site in the permit area or a state-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the site do not degrade surface or groundwater. [other appropriate disposal areas approved by the cabinet. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site.] Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two (2) feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 405 KAR 18:200. Operation of the disposal site shall be conducted in accordance with all local, state, and federal requirements.

(3) At no time shall any noncoal mine waste [such waste material] be deposited in a refuse pile or impounding structure [at coal processing waste banks, dams or impoundments], nor shall any such excavation for waste disposal be placed within eight (8) feet of any coal outcrop or coal storage area.

(4) Disposal of hazardous and solid waste other than "coal mining solid waste" (as defined by regulations of the Division of Waste Management) shall not be conducted on the permit area, unless a permit is obtained from the Kentucky Division of Waste Management.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect permittees of underground mines operating under permanent program requirements. As of June 30, 1987, there were 1,456 underground mines operating in the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, etc.), a portion of which were subject to underground mining standards. During Fiscal Year 1987, the cabinet received 416 new permit application, and future permitting activities are anticipated to remain at about this same level. This amendment simply increases the clarity of current 405 KAR 18:150. For example, permittees using a mine site for disposal of hazardous or solid waste, other than coal mining solid waste, must obtain a disposal permit from the Kentucky Division of Waste Mangement. This requirement exists currently; however, proposed Section 1(4) makes the requirement clear. For the most part, no additional requirements are being imposed, but clarity is being added. The only change of substance in this amendment addresses the design and construction of water barriers around wastes to prevent the contamination of surface and groundwater. Whereas the current regulation mandates water barriers as the sole type of protective measure, this amendment provides more flexibility. Under the amendment, disposal sites msut be designed and constructed to ensure that leachate and drainage from the site do not degrade surface or groundwater. If more control practices than water barriers are needed, they must be implemented. Likewise, if contamination can be prevented without water barriers, such barriers need not be installed.

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

1. First year: This amendment may result in additional savings to some permittees who are able to implement more cost effective means of waste disposal. Conversely, the amendment has the potential to increase some disposal costs; however, this should be rare.

2. Continuing costs or savings: The savings and costs established in the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and the amendment will not affect competition.

(b) Reporting and paperwork requirements: This amendment will not impose additional reporting or paperwork requirements on the affected entities.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment will not cause the cabinet to incur additional costs or benefit from additional savings.

2. Continuing costs or savings: This amendment will not cause the cabinet to incur additional costs or benefit from additional savings.

3. Additional factors increasing or decreasing

costs: There are no additional factors that would increase or decrease costs to the cabinet.

(b) Reporting and paperwork requirements: The amendment will not impose additional paperwork or reporting requirements on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternative methods of implementing these changes other than by promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: The reference to Division of Waste Management requirements is being made to alleviate confusion and to clarify the relationship between the DWM requirements and those of DSMRE.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 817.89, as revised by federal register 51 FR 41952 et seq., published November 11, 1986.

2. State compliance standards. This amendment requires that noncoal mine waste be disposed of in a designated disposal site in the permit area or in a state-approved solid waste disposal area. The amendment also requires that disposal sites in the permit area be designed and constructed to ensure that leachate and drainage from the site do not degrade surface or groundwater. Additionally, the amendment prohibits the disposal of hazardous waste and solid waste, other than coal mine solid waste, on the permit area, unless a permit is obtained from the Kentucky Division of Waste Management.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that noncoal mine waste be disposed of in a designated disposal site in the permit area or in a state-approved solid waste disposal area. The mandate also requires that disposal sites in the permit area be designed and constructed to ensure that leachate and drainage from the site do not degrade surface or groundwater.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment references the Kentucky Division of Waste Management's requirements for hazardous and solid waste permits. This reference is not included in the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The reference to hazardous and solid waste permits of the Kentucky Division of Waste Management is being added to eliminate confusion and clarify the relationship between the DWM requirements and those of DSMRE.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation
and Enforcement
(Proposed Amendment)

405 KAR 18:190. Backfilling and grading.

RELATES TO: KRS 350.020, 350.093, 350.100, 350.151, 350.405, 350.410, 350.450, 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. 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.

Section 2. General Backfilling and Grading Requirements. (1) Except as provided in subsection (8) of this section, 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);

(b) Ensure a long-term static factor of safety of at least one and three-tenths (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) Minimize erosion and adverse effects on surface and ground water both on and off the site; and

(e) Support the approved postmining land use.

(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 one and three-tenths (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;]

(b) [(d)] Are not disapproved [approved] by the cabinet;

(c) [(e)] Do not adversely affect the stability of the backfilled area; and

(d) [(f)] Are not located on steep-slope outslopes.

(5) Impoundments on backfilled areas may be approved, if 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 steep-slope outslopes.

(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) 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 placement shall be conducted in a manner which minimizes erosion and provides a surface for 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 pursuant to subsection (9) of this section.

(9) Face-up areas and similar cut slopes created prior to the effective date of SMCRA, as defined at Section 502(a), (b), and (c) therein, that are associated with underground mining activities which were started prior to the effective date of SMCRA and which have continued as existing and ongoing operations pursuant to permits issued under the interim and permanent regulatory programs shall be backfilled and graded in accordance with the requirements of Section 5 of this regulation; provided, however, that for the purposes of this subsection "reasonably available spoil" shall not include spoil generated by the operation prior to the effective date of SMCRA which is not accessible and available for use or which would cause a hazard to public safety or significant damage to the environment if rehandled.

Section 3. Disposal of Acid-forming, Toxic-forming, and Combustible Materials and Coverage of Coal Seams. (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) 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 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 acid-forming materials, toxic-forming materials, and combustible materials be placed below the permanent water table.

(3) The cabinet shall require 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.

Section 4. Regrading or Stabilizing Rills and Gullies. Except as provided in subsections (a) and (b) of this section, 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 replanted according to 405 KAR 18:200.

(1) [The cabinet may specify that] Rills or gullies less than nine (9) inches deep shall [of lesser size] be stabilized and the area reseeded and/or replanted, if the rills or gullies are disruptive to the approved postmining land use or to the establishment of vegetation, may result in additional erosion and sedimentation, or may cause or contribute to the violation of a water quality standard.

(2) Rills and gullies deeper than nine (9) inches need not be filled, regraded, and revegetated if all of the following criteria are met:

(a) They are incised to solid bedrock or are otherwise stable and not likely to further erode;

(b) They are not disruptive to the approved postmining land use or to the establishment of the vegetative cover; and

(c) They neither cause nor contribute to the violation of water quality standards.

Section 5. Remining Previously Mined Areas. (1) General requirements. Remining operations on previously mined areas, including steep slope areas, that contain a preexisting highwall shall comply with Sections 1 through 4 of this regulation except as provided in this section.

(2) Definitions.

(a) "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 preexisting highwall face is removed; or

2. The highwall resulting from remining where the preexisting highwall is vertically enlarged.

(c) "Previously mined area" means land disturbed by earlier activities related to coal mining on which none of the earlier disturbances were subject to any of the standards of SMCRA. [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.]

(d) "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) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(3) Variances to backfilling and grading requirements for remining operations. The requirements within Section 2(1)(a) of this regulation to completely eliminate highwalls shall 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 preexisting or modified highwall. The highwall shall be eliminated to the maximum extent technically practicable in accordance with the following criteria:

(a) All reasonably available spoil shall be used to backfill 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 (one and three-tenths (1.3) long-term static factor of safety), provided, however, that the exposed coal seam shall be covered in accordance with Section 3 of this regulation.

(c) Spoil generated or handled by the remining operation shall not be placed on the fill section of any existing or new bench.

(d) 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 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.

(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 or 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 resown 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 OSMRE and is reclaimed in accordance with the requirements of KRS Chapter 350 and this Title.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect permittees of underground mines operating under permanent program requirements. As of June 30, 1987, there were 1,456 underground mines operating in the permanent program, as well as 314 miscellaneous permits (road-only permits, refuse fills, etc.), a portion of which were subject to underground mining standards. During Fiscal Year 1987, the cabinet received 416 new permit applications, and future permitting activities are anticipated to remain at about this same level. Not all of the persons identified above will be directly impacted by this amendment. The regulatory provisions being revised are not broad enough to impact the entire coal community. The three changes being made in this amendment are as follows: the criteria that must be met to retain small depressions on backfilled areas are being relaxed; an exemption from the requirement to regrade certain rills and gullies that are deeper than nine inches is being added; and the definition of "previously mined area" to include certain post-SMCRA disturbances is being broadened, so more operations will be eligible for the variances set forth for the remining of previously mined areas.

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

1. First year: All three of the changes will result in savings. The changes to the small depression provisions will lessen the need for a permittee to regrade backfilled areas; the rills and gullies exemption will eliminate the need, in some instances, for a permittee to fill and reseed certain rills and gullies; and the "previously mined area" change will encourage the reclamation of already disturbed areas by applying the backfilling and grading variance for remining operations to a wider universe of mines. The rills and gullies change will also.

2. Continuing costs or savings: The savings established in the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or

decrease costs, and the amendment will have no affect on competition.

(b) Reporting and paperwork requirements: An operation that may be eligible for the backfilling and grading variance for remining will need to demonstrate that the affected area meets the definition of a "previously mined area." This demonstration will be included in the permit application.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will have to make determinations as to whether a rill or gully deeper than nine inches needs to be filled and reseeded. Also, determinations will have to be made regarding whether a proposed remining area meets the definition of a "previously mined area."

2. Continuing costs or savings: The costs established in the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease the cabinet costs.

(b) Reporting and paperwork requirements: This amendment will not impose any additional paperwork or reporting requirements on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: This amendment not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternative methods of implementing these changes other than by promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 817.102, as revised by federal register 48 FR 41719 et seq., published September 16, 1983; 30 CFR 817.95, as revised by federal register 48 FR 1159 et seq., published January 10, 1983; and 30 CFR 701.5, as revised by federal register 52 FR 17526 et seq., published May 8, 1987.

2. State compliance standards. This amendment allows for the retention of small depressions on backfilled areas in certain circumstances, allows rills and gullies deeper than nine inches to remain on backfilled areas in certain situations, and redefines the term "previously mined area" to mean lands disturbed by earlier activities related to coal mining on which none of the earlier disturbances were subject to any of the standards of SMCRA.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate allows for the retention of small depressions on backfilled areas in certain circumstances, allows rills and gullies deeper than nine inches to remain on backfilled areas in certain situations, and defines the term "previously mined area" as lands previously mined on which there were no surface coal mining operations subject to the standards of the Act (SMCRA).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter requirements than the federal mandate; however, the amendment does not track federal language in every instance.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Where the amendment deviates from federal language, the deviation is to increase clarity and remove ambiguity. The proposed standards, responsibilities, and requirements are not stricter than those of the federal mandate.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 20:010. Coal exploration.

RELATES TO: KRS 350.057, 350.465
PURSUANT TO: KRS Chapter 13A, 350.028, 350.057, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to regulate coal exploration operations which substantially disturb the natural land surface. This regulation sets forth the performance standards applicable to coal exploration operations which substantially disturb the land surface.

Section 1. General Responsibility of Persons Conducting Coal Exploration. Each person who conducts coal exploration which substantially disturbs the natural land surface shall comply with the provisions of Section 3 of this regulation. [(1) Each person who conducts coal exploration which substantially disturbs the natural land surface and in which 250 tons or less of coal are removed shall file the notice of intention to explore required under 405 KAR 8:020, Section 1 and shall comply with Section 3 of this regulation.]

[(2) Each person who conducts coal exploration which substantially disturbs the natural land surface and in which more than 250 tons of coal

are removed in the area described by the written approval from the cabinet, shall comply with the procedures described in the exploration and reclamation operations plan approved under 405 KAR 8:020, Section 2 and shall comply with Section 3 of this regulation.]

Section 2. Required Documents. Each person who conducts coal exploration [which substantially disturbs the natural land surface and] which removes more than 250 tons of coal or which is located in an area designated unsuitable for mining pursuant to KAR Title 405 Chapter 24 shall, while in the exploration area, possess written approval of the cabinet for the activities granted under 405 KAR 8:020, Section 2. The written approval shall be available for review by the authorized representative of the cabinet or the Office of Surface Mining Reclamation and Enforcement upon request.

Section 3. Performance Standards for Coal Exploration. The performance standards in this section are applicable to coal exploration which substantially disturbs land surface.

(1) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) [and areas identified in 405 KAR 8:020, Section 2(2)(c)1] shall not be disturbed during coal exploration.

(2) The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit under Title 405, Chapter 8.

(3)(a) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(b) Any new road in the exploration area shall comply with the provisions of 405 KAR 16:220.

(c) Existing roads may be used for exploration in accordance with the following:

1. All applicable federal, state, and local requirements shall be met.

2. If the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to stream flow or run-off, then subsection (7) of this section shall apply to all areas of the road which are altered or which result in such additional contributions.

3. If the road is significantly altered for exploration activities and will remain as a permanent road after exploration activities are completed, the person conducting exploration shall ensure that the requirements of 405 KAR 16:220 are met for the design, construction, alteration, and maintenance of the road.

(d) Promptly after exploration activities are completed, existing roads used during exploration shall be reclaimed either:

1. To a condition equal to or better than their preexploration condition; or

2. To the condition required for permanent roads under 405 KAR 16:220.

(4) If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(5) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the cabinet.

(6) All [Revegetation of] areas disturbed by coal exploration activities shall be revegetated [performed by the person who conducts the exploration or his or her agent. If more than 250 tons of coal are removed from the exploration area, all revegetation shall be in compliance with the plan approved by the cabinet and carried out] in a manner that encourages prompt revegetation [vegetative cover] and recovery of a diverse, effective, and permanent vegetative cover. Revegetation shall be accomplished [productivity levels compatible with approved postexploration land use and] in accordance with the following:

(a) All areas disturbed by coal exploration activities [disturbed lands] shall be seeded or planted to the same seasonal variety native to the areas disturbed [area]. If [both] the preexploration [and postexploration] land use was [uses are] intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(b) The vegetative cover shall be capable of stabilizing the soil surface from [in regards to] erosion.

(7) Diversions of overland flows and ephemeral, perennial, or intermittent streams shall be made in accordance with 405 KAR 16:080. [With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during coal exploration activities. Overland flow of water shall be diverted in a manner that:]

[(a) Prevents erosion;]

[(b) To the extent possible using the best technology currently available, prevents additional contributions of suspended solids to stream flow or run-off outside the exploration area; and]

[(c) Complies with all other applicable state or federal requirements.]

(8) Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of 405 KAR 16:040.

(9) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that may remain to:

(a) Provide additional environmental quality data;

(b) Reduce or control the on- and off-site effects of the exploration activities; or

(c) Facilitate future surface mining and reclamation operations by the person conducting the exploration, under an approved permit.

(10) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with 405 KAR 16:060 through 405 KAR 16:110. [, and

shall include sediment control measures such as those listed in 405 KAR 16:060, Section 2 or sedimentation ponds which comply with 405 KAR 16:090.] The cabinet may specify additional measures which shall be adopted by the person engaged in coal exploration.

(11) Toxic- or acid-forming materials shall be handled and disposed of in accordance with 405 KAR 16:060, Section 4 and 405 KAR 16:190, Section 3. If specified by the cabinet, additional measures shall be adopted by the person engaged in coal exploration.

Section 4. Requirements for a Permit. Any person who extracts coal for commercial sale during coal exploration operations must obtain a permit for those operations from the cabinet under Title 405, Chapter 8. No permit is required if the cabinet makes a prior determination that the sale is to test for coal properties necessary for the development of surface coal mining and reclamation operations for which a permit application is to be submitted at a later time.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect persons conducting coal exploration operations that substantially disturb the natural land surface (including those removing more than 250 tons of coal) and those conducting exploration operation in an area designated unsuitable for mining. As of May 30, 1988, there were 608 exploration notices in effect, and there were no exploration operations approved for removal of more than 250 tons of coal.

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

1. First year: The amendment imposes new revegetation requirements; and new standards for stream diversions and protection of the hydrologic balance; and new standards for protection of fish, wildlife, and related environmental values. Some additional costs will be incurred by adoption of these new requirements. In contrast to current 405 KAR 20:010, the amendment allows for the diversion of ephemeral, intermittent, and perennial streams. This flexibility may result in financial savings to some persons conducting coal exploration.

2. Continuing costs or savings: The costs and savings established in the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and this amendment will not affect competition.

(b) Reporting and paperwork requirements: Persons exploring in an area designated unsuitable for mining will need to retain a copy of the cabinet's approval on-site. However, this will not impose additional costs.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will not incur any additional costs or savings as a result of this amendment.

2. Continuing costs or savings: The cabinet will not incur any additional costs or savings as a result of this amendment.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs to the cabinet.

(b) Reporting and paperwork requirements: The amendment will neither increase nor lessen the cabinet's reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives methods of implementing these changes other than by promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this amendment because, under the Surface Mining Control and Reclamation Act of 1977 and the Kentucky Surface Mining Law, these provisions must apply to all persons under the permanent program.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR Part 815, as revised by federal register 48 FR 40621 et seq., published September 8, 1983.

2. State compliance standards. This amendment requires that coal explorers retain a copy of their exploration approvals while in the exploration area. The amendment also prohibits those conducting coal exploration from disturbing habitats of unique or unusually high value for fish, wildlife, and other environmental values and critical habitats of federally-listed threatened and endangered species. Additionally, the amendment expands the list of persons who must revegetate lands disturbed by coal exploration, establishes new requirements for protecting the hydrologic balance, and revises the requirements for diversions on an exploration site.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that coal explorers retain a copy of their exploration approvals while in the exploration area. The mandate also prohibits those conducting coal exploration from disturbing habitats of unique or unusually high value for fish, wildlife, and other environmental values and critical habitats of federally-listed threatened and endangered species. Additionally, the mandate parallels the provisions in the amendment with respect to the proposed provisions for revegetating lands disturbed by coal exploration, the proposed requirements for protecting the hydrologic balance, and the proposed requirements for diversions on an exploration site.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment will not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 20:060. Steep slopes.

RELATES TO: KRS 350.090, 350.093, 350.100, 350.405, 350.445, 350.465
PURSUANT TO: KRS Chapter 13A, 350.028, 350.093, 350.100, 350.445, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate environmental protection performance standards, specifically including such standards for operations conducted on steep slopes. This regulation sets forth special performance standards and limited variance procedures for operations conducted on steep slopes.

Section 1. Applicability. (1) Any surface coal mining and reclamation operations on steep slopes shall meet the requirements of this regulation.

(2) The standards of this regulation do not apply to mining conducted on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area, or to operations covered by 405 KAR 20:050.

Section 2. Performance Standards. (1) Surface coal mining and reclamation operations subject to this regulation shall comply with requirements of [Title 405, Chapter 8 and] this section and all other requirements of Title 405 KAR Chapters 7 through 24, except to the extent a variance is approved under Section 3 of this regulation.

(2)(a) The permittee shall prevent the following materials from being placed or allowed to remain on the downslope:

1. Spoil;
2. Waste materials, including waste mineral matter;
3. Debris, including that from clearing and grubbing of haul road construction; and
4. Abandoned or disabled equipment.

(b) Nothing in this subsection shall prohibit the placement of material in road embankments located on the downslope, so long as the material used and embankment design comply with the requirements for roads and other transportation facilities in Title 405, Chapters 16 and 18 and the material is moved and placed in a controlled manner.

(3) The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of Title 405, Chapters 16 and 18, with respect to backfilling and grading, including, but not limited to, the return of the site to the approximate original contour. The permittee must demonstrate to the cabinet, using standard geotechnical analyses, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least one and three-tenths (1.3).

(4) Land above the highwall shall not be disturbed unless the cabinet finds that the disturbance facilitates compliance with the requirements of Title 405, Chapters 16 through 20, provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate said compliance.

(5) Material in excess of that required by the grading and backfilling provisions of subsection (3) of this section shall be disposed of in accordance with the requirements of 405 KAR 16:130 or 405 KAR 18:130.

(6) Woody materials shall not be buried in the backfilled area unless the cabinet determines that the proposed method for placing woody material within the backfill [beneath the highwall] will not deteriorate the stable condition of the backfilled area as required in subsection 3 of this section. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the

cabinet.

(7) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the cabinet as stable and not subject to erosion.

Section 3. Limited variances for nonmountaintop removal, steep slope sites. Surface coal mining operations may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:

(1) The cabinet grants the variance and the operation is conducted and reclaimed in accordance with the plan approved under 405 KAR 8:050, Section 6.

(2)(a) After reclamation, the lands to be affected by the variance within the permit area shall be suitable for an industrial, commercial, residential, or public postmining land use (including recreational facilities);

(b) After consultation with the appropriate land use planning agencies, if any, the potential use is shown to constitute an equal or better economic or public use;

(c) The alternative postmining land use requirements of 405 KAR 16:210, Section 4 are met; and

(d) Federal, state, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

(3) The applicant has demonstrated in the permit application that the watershed of lands within the proposed permit and adjacent areas will be improved by the operations when compared with the condition of the watershed before mining or with its condition if the approximate original contour were to be restored. The watershed will be deemed improved only if:

(a) The amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced, so as to improve the public or private uses or the ecology of such water, or flood hazards from precipitation events or thaws within the watershed containing the permit area will be reduced by decreasing the peak flow discharge, or there will be an increase in streamflow during times of the year when streams within the watershed are normally at low flow or dry and such and increase in streamflow is determined by the cabinet to be beneficial to public or private users or to the ecology of such streams; and

(b) The total volume of flow 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 or groundwater.

(4) The proposed use is designed and certified by a qualified, registered, professional engineer in conformance with professional standards established to assure the stability, drainage, and configuaration necessary for the intended use of the site.

(5) The surface landowner of the permit area has knowlingly requested, in writing in the permit application, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public postmining land use (including recreational facilities).

(6) All applicable requirements of KRS Chapter 350 and Title 450, Chapters 7 through 24, other than the requirement to restore disturbed areas to their approximate original contour, are met.

(7) The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3, using standard geotechnical analysis.

(8) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other applicable requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 405 KAR 16:130. [(1) Permittees may be granted variances from the approximate original contour requirements of Section 2(3) of this regulation for steep slope surface coal mining and reclamation operations, if the following standards are met and a permit incorporating the variance is approved under 405 KAR 8:050.]

[(a) The highwall shall be completely backfilled with spoil material, in a manner which results in a static factor of safety of at least one and three-tenths (1.3) using standard geotechnical analyses.]

[(b) The watershed control of the area within which the mining occurs shall be improved by reducing the peak flow from precipitation or thaw, by reducing the total suspended solids or other pollutants in the surface water discharge during precipitation or thaw, or by increasing stream flow during times of the year when the stream is normally at low flow or dry conditions and such increase in stream flow is determined by the cabinet to be beneficial to public or private users or the ecology of such streams. The total volume of flow during every season of the year shall not vary in a way that adversely affects the ecology of any surface water or any existing or planned public or private use of surface or groundwater.]

[(c) Land above the highwall may be disturbed only to the extent that the cabinet deems appropriate and approves as necessary to facilitate compliance with the provisions of Title 405, Chapters 16 through 20, and provided that the cabinet finds that the disturbance is necessary to:]

[1. Blend the solid highwall and the backfilled material;]

[2. Control surface run-off;]

[3. Provide access to the area above the highwall; or]

[4. Eliminate the highwall where sufficient backfill material is not otherwise available.]

[(d) The landowner of the permit area has requested, in writing, as part of the permit application under 405 KAR 8:050, that the variance be granted.]

[(e) The operations are conducted in full compliance with a permit issued in accordance with 405 KAR 8:050.]

[(f) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 shall be placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 405 KAR 16:130 or 405 KAR 18:130.]

[(2) Permittees shall be granted variances from the approximate original contour requirements and highwall elimination

requirements of Section 2(3) of this regulation where steep slope contour-mining operations affect previously mined areas that were not reclaimed to the standards of Title 405 of the Kentucky Administrative Regulations, and there is no continuing responsibility to reclaim to such standards, and the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the highwall; provided, however, that the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:]

[(a) The backfill shall be designed by a qualified registered professional engineer.]

[(b) The permittee shall demonstrate to the cabinet that the backfill has a minimum static safety factor for stability of at least one and three-tenths (1.3).]

[(c) All spoil shall be retained on the solid portion of existing or new benches.]

[(d) All reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the 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) 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.]

[(f) Any remnant of the highwall shall be stable and not pose a hazard to the public health and safety or to the environment.]

[(g) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.]

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: 405 KAR 20:060 sets forth provisions applicable to steep slope operations and variances from approximate original contour for such operations. This proposed amendment will affect any coal operator applying for a comprehensive permit for steep slope operations in which an approximate original contour variance is requested. However, the cabinet anticipates that very few operations will be affected by the revised regulation. There is a remining provisions that is being deleted because it is no longer necessary. 405 KAR 16:190 and 18:190 have detailed provisions for backfilling and grading for remining operations.

(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): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements are expected.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings to the promulgating adminstrative body are expected.
2. Continuing costs or savings: Same as subparagraph 1 above.
3. Additional factors increasing or decreasing costs: There are no factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements are expected.

(3) Assessment of anticipated effect on state and local revenues: The revised regulation will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered.

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

(a) Necessity of proposed regulation if in conflict: 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. Tiering was not applicable to this revised regulation since under the federal and Kentucky law the steep slope provisions of Kentucky's permanent program for coal mining must apply equally to all surface coal mining and reclamation operations.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate (cite federal mandate). The federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) establishes the basis whereby state and federal authorities regulate coal mining. Sections 515(d) and (e) of the Act contain provisions applicable to steep slope operations and approximate original contour variances for such operations. OSMRE's corresponding language is found at 30 CFR 785.16, 816.107, 817.107, 816.133(d) and 817.133(d). For the most part, the proposed language is virtually the same as the counterpart federal language; however, it has been consolidated primarily into one regulation (405 KAR 20:060) instead of separate sections. The only noteworthy difference is that the proposed regulation restricts approximate original contour variances to steep slopes only; whereas, the federal language does not contain this limitation. The OSMRE provision, allowing AOC variances on steep slopes and nonsteep slopes, has been remanded by a federal court and the remand has been upheld on appeal. The proposed language (405 KAR 20:060) was written to be consistent with the federal court decision. Furthermore, since the court ruling OSMRE has suspended the federal regulation.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail). The proposed regulation does not impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate as modified by the court ruling.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of those stricter standards, requirements or responsibilities. N/A

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 24:020. Petition requirements.

RELATES TO: KRS 350.465(2)(b), 350.610
PURSUANT TO: KRS Chapter 13A, 350.465(2), 350.610
NECESSITY AND FUNCTION: KRS 350.465(2) and 350.610 require the cabinet to prepare, develop, and promulgate a permanent program for the implementation of SMCRA containing procedures similar to that Act. This regulation sets forth requirements for petitions seeking designation of certain lands as unsuitable for all or certain types of surface coal mining operations and for the termination of such designations.

Section 1. General. Under the following procedures, persons may petition the cabinet to designate areas as unsuitable for all or certain types of surface coal mining operations. Additionally, there are procedures for citizens to petition the cabinet to terminate a designation of unsuitability for mining.

Section 2. Right to Petition. Any person having an interest which is or may be adversely affected has the right to petition the cabinet to have an area designated as unsuitable for all or certain types of surface coal mining operations, or to have an existing designation terminated. However, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

Section 3. Designation Petition. (1) A petitioner shall file a petition containing all information that the cabinet requires pursuant to this section using forms provided by the cabinet.

(2) The petition for designation shall include the following information: [described in subsections (3) through (7) of this section.]

(a) [(3)] The petitioner's name, address, telephone number, and notarized signature.

(b) [(4)] Identification of the petitioner's interest which is or may be adversely affected, including a statement demonstrating how the petitioner satisfies the requirements of Section 2 of this regulation.

(c) [(5)] A USGS 7 1/2 minute topographic map(s) marked to show the location and size of the geographic area covered by the designation petition.

(d) [(6)] A description of how surface coal mining operations in the area have or may adversely affect people, land, air, water or other resources.

(e) [(7)] Allegations of facts and objective evidence which would tend to establish that the area, as defined in 405 KAR 7:020, is unsuitable for all or certain types of surface coal mining operations, assuming that contemporary mining practices required under Title 405, Chapters 7 through 24 would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known; the portion(s) of the petitioned area and the petitioner's interests to which the allegation applies; and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area. The allegations [. Allegations of fact and objective evidence shall be specific as to the petitioned "area" as defined in 405 KAR 7:020 and] shall address one (1) or more of the following:

1. [(a)] Reclamation is not technologically and economically feasible under the provisions of Title 405, Chapters 7 through 24; or

2. [(b)] Surface coal mining and reclamation operations will be:

a. [1.] Be incompatible with existing land use policies, plans, or programs adopted by state, areawide, or local agencies with management responsibilities for the areas which would be affected by such surface coal mining and reclamation operations;

b. [2.] Affect fragile or historic lands in which the surface coal mining operations could result in significant damage to important historic, cultural, scientific, or aesthetic values or natural systems;

c. [3.] Affect lands in which the surface coal mining operations could result in a substantial loss or reduction in the long-range availability of water supplies, to include aquifers and

aquifer recharge areas;

d. [4.] Affect renewable resource lands in which the surface coal mining operations could result in a substantial loss or reduction in the long-range productivity of food or fiber products; or

e. [5.] Affect natural hazard lands in which surface coal mining operations could substantially endanger life and property.

(3) The cabinet may request that the petitioner provide other supplementary information which is readily available. However, failure to provide such information shall not render the petition incomplete.

(4) [6.] Petitions shall be mailed or delivered to: Kentucky Cabinet for Natural Resources and Environmental Protection, Lands Unsuitable Program, Department of Surface Mining Reclamation and Enforcement, Frankfort, Kentucky 40601.

Section 4. Termination Petition. (1) A petitioner shall file a petition for termination of designation of an area as unsuitable for all or certain types of surface coal mining operations using forms provided by the cabinet [containing all information that the cabinet requires pursuant to this section]. The petition for termination may cover all or any portion of the specific geographical area that was previously designated as unsuitable for surface coal mining operations and shall address those criteria upon which designation was based.

(2) The petition for termination shall include the following information: [described in subsections (3) through (6) of this section.]

(a) [(3)] The petitioner's name, address, telephone number, and notarized signature.

(b) [(4)] Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation of the area as unsuitable for all or certain types of surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of Section 2 of this regulation.

(c) [(5)] A USGS 7 1/2 minute topographic map(s) marked to show the location and size of the geographic area covered by the termination petition.

(d) [(6)] Allegation of facts and objective evidence covering the area for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and the petitioner's interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under Title 405, Chapters 7 through 24, would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on one (1) or more of the following bases: [, not contained in the record of the proceeding in which the area was designated as unsuitable for all or certain types of surface mining operations, which would tend to establish the allegations that the designation should be terminated. Allegations of fact and objective evidence shall address one (1) or more of the following:]

1. [(a)] Reclamation is now technologically and economically feasible, if the designation was based on a finding that reclamation was either technologically and economically unfeasible; or [.]

2. [(b)] Surface coal mining operations:

a. [1.] Will not now be incompatible with land use policies, plans, or programs adopted by state, areawide, or local agencies with management responsibilities for the designated area, if the designation was based on a finding of such incompatibility;

b. [2.] Will not now result in significant damage to important historic, cultural, scientific, or aesthetic values or natural systems related to fragile or historic lands, if the designation was so based;

c. [3.] Will not now result in substantial loss or reduction of long-range availability of water supplies if the designation was so based;

d. [4.] Will not now result in substantial loss or reduction of long-range productivity of food and fiber products, if the designation was so based; or

e. [5.] Will not now affect natural hazard lands in which the surface coal mining operation could have substantially endangered life and property, if the designation was so based.

(3) The cabinet may request that the petitioner provide other supplementary information which is readily available. However, failure to provide such information shall not render the petition incomplete.

(4) [(7)] Termination petitions shall be mailed or delivered to: Kentucky Cabinet for Natural Resources and Environmental Protection, Lands Unsuitable Program, Department of Surface Mining Reclamation and Enforcement, Frankfort, Kentucky 40601.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining

Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This regulation contains the petition requirements for either designating an area unsuitable for mining or terminating such a designation. The proposed amendment clarifies those individuals or entities having the right to petition; modifies requirements regarding allegations of fact and objective evidence; adds aquifers and aquifer recharge areas to a category of affected lands which may be petitioned; and adds the requirement for a petitioner to provide supplemental information requested by the cabinet if such information is readily available. This regulation will affect all individuals or entities who petition the cabinet to either designate an area as unsuitable for all or certain types of surface coal mining operations, or to have an existing designation terminated. Since the permanent regulatory program took effect in 1982, 16 such petitions have been submitted, an average of less than three per year. The regulation also affects, directly or indirectly, the general public which lives in, or owns property in, the coal regions of Kentucky.

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

1. First year: In addition to the specific requirements of petitions, the proposed amendment allows the cabinet to require the petitioner to provide supplementary information if such information is readily available. (Failure to provide such information will not render the petition incomplete in accordance with 405 KAR 24:030, Section 3.) If the cabinet requests additional information, the petitioner may incur additional expenses based on the nature of the request. Overall, savings to the petitioner may result since the majority of the proposed amendment clarifies existing regulatory requirements and will make it easier for a petitioner to submit a complete petition.

2. Continuing costs or savings: Same as first year.

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: As stated in (1)(a)1, the proposed amendment allows the cabinet to request information to supplement a petition. Additional expense to the cabinet may be encountered in requesting and reviewing this information. However, since relatively few applications are received by the cabinet, the additional expense should be negligible. Overall, savings to the cabinet may result since the majority of the proposed amendment clarifies existing regulatory requirements. The additional details provided will make it easier for a petitioner to submit a complete petition, thereby reducing the time needed in review.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment since these requirements must, under the federal and Kentucky surface mining laws and regulations, apply equally to all applicants under Title 405, Chapters 7 through 24.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 762, as revised at 48 FR 41350, Sept. 14, 1983; and 30 CFR 764, as revised at 48 FR 41351, Sept. 14, 1983.

2. State compliance standards. This regulation contains the petition requirements for either designating an area unsuitable for mining or terminating such a designation. The proposed amendment clarifies those individuals or entities having the right to petition; modifies requirements regarding allegations of fact and objective evidence; adds aquifers and aquifer recharge areas to a category of affected lands which may be petitioned; and adds the requirement for a petitioner to provide supplemental information requested by the cabinet if such information is readily available.

3. Minimum or uniform standards contained in the federal mandate. 30 CFR 762 establishes the minimum criteria to be used in determining whether lands should be designated as unsuitable for all or certain types of surface coal mining operations. 30 CFR 764 establishes minimum procedures and standards to be included in each approved state program for designating lands as unsuitable for all or certain types of surface coal mining operations and for terminating such designations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 24:030. Process and criteria for designating lands unsuitable for surface mining operations.

RELATES TO: KRS 350.465(2)(b), 350.610
PURSUANT TO: KRS Chapter 13A, 350.465(2), 350.610
NECESSITY AND FUNCTION: KRS 350.465(2) and 350.610 require the cabinet to prepare, develop, and promulgate a permanent regulatory program for the implementation of SMCRA containing procedures similar to that Act. This regulation sets forth procedures and criteria for reviewing petitions seeking designation of lands as unsuitable for all or certain types of coal mining operations and for the termination of designations.

Section 1. General. The following procedures and criteria establish a process enabling objective decisions to be made on [which] land areas, if any, which are unsuitable for all or certain types of surface coal mining operations. These decisions shall be based on the best available, scientifically sound data and other relevant information.

Section 2. Lands Exempt From Designation. (1) Petitions for designating lands as unsuitable for all or certain surface coal mining operations will not be considered for:
(a) Lands on which surface coal mining operations were being conducted on August 3, 1977;
(b) Lands covered by a permit issued under KRS Chapter 350 or a permit application for which the public comment period has closed according to Section 3(6) of this regulation;
(c) Lands where substantial legal and financial commitments were in existence prior to January 4, 1977 in such surface coal mining operations.
(2)(a) "Substantial legal and financial commitments" means significant investments, that have been made on the basis of a long-term coal contract, consisting of actual expenditures of substantial monies or execution of valid and binding contracts involving substantial monies for such things as power plants; railroads; coal handling, preparation, extraction, and storage facilities; and other capital-intensive activities such as:
1. Improvement or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations in the petitioned area;
2. Acquisition of capital equipment for use in, for access to, or for use in support of surface coal mining and reclamation operations in the petitioned area; and
3. Exploration, mapping, surveying, and geological work, as well as expenditures of engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations in the petitioned area.
(b) The costs of acquiring the coal in place or the right to mine such coal are not sufficient to constitute a substantial legal and financial commitment in the absence of other investments as described in paragraph (a) of this subsection.

Section 3. Initial Processing of Petitions. (1) Within thirty (30) days of the receipt of a petition to designate or terminate, the cabinet shall notify the petitioner by certified mail whether or not the petition is complete. A petition shall be deemed incomplete if the cabinet finds that the petition does not contain all information required by 405 KAR 24:020, Sections 3 and 4.
(2) If the cabinet determines that the petition is incomplete, it shall be returned to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.
(3) The cabinet shall determine whether any identified coal resources exist in the area described in the petition. Should the cabinet find that there are no identified coal resources in that area, the petition shall be returned to the petitioner with a statement of findings.
(4) If the cabinet determines the petition to be frivolous or that the petition does not meet the requirements of 405 KAR 24:020, Section 2, it shall be returned to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit. [The cabinet may reject petitions for designations or terminations which are found to be frivolous. If the cabinet finds that the petition is frivolous, it shall return the petition to the petitioner with a written statement of the reasons for the determinations.]
(5) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the cabinet shall determine if the new petition presents substantial new allegations of facts and objective evidence. If the petition does not contain new and substantial allegations of facts, the cabinet shall return the petition with a statement of its findings and a reference to the record of the previous designation proceedings.
(6) Petitions received after the close of the public comment period on a permit application relating to the same area shall not prevent the cabinet from issuing a decision on that permit application. The cabinet may return such a petition to the petitioner with a statement of why the cabinet will not consider the petition. For the purposes of this regulation, the close of the public comment period shall mean at the close of the period for filing written comments and objections under 405 KAR 8:010, Sections 9 and 10.

Section 4. Notification and Request for Information. (1) The cabinet shall periodically notify the petitioner of applications for a permit received which propose to include any area covered by the petition. The cabinet shall begin this notification procedure only after it has determined that the petition is complete and has so notified the petitioner.
(2) Within twenty-one (21) days after the determination that a petition is complete, the cabinet shall circulate copies of the petition form to, and request submission of relevant

information from:
(a) Other interested government agencies;
(b) Areawide development district agencies;
(c) The petitioner;
(d) Intervenors; and
(e) Other persons known to the cabinet to have an interest in the property.

(3) Within twenty-one (21) days of the final determination that the petition is incomplete or frivolous, the cabinet shall notify the general public of the receipt of the petition and the cabinet's determination that the petition is incomplete or frivolous by one (1) newspaper advertisement in the newspapers specified in subsection (4)(a) and (b) of this section.

(4) [(3)] Within twenty-one (21) days after the determination that a petition is complete, the cabinet shall notify the general public [of the receipt of the petition] by [a] newspaper advertisement. The notice shall identify the petitioner and provide the mailing address of the petitioner. The notice shall request submissions of relevant information; and shall request that persons with an ownership or other interest of record in the property covered by the petition, who wish to be notified of any hearing, identify themselves to the cabinet. The advertisement shall be placed once a week for two (2) consecutive weeks:
(a) In the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county of the area covered by the petition; and
(b) In the newspaper of largest circulation in the state.

(5) [(4)] Until three (3) days before the cabinet holds a public hearing on the petition pursuant to Section 7 of this regulation, any person may intervene in the preceding, by filing:
(a) The intervenor's name, address, telephone number, and notarized signature;
(b) Identification of the intervenor's interest which is or may be adversely affected;
(c) A short statement identifying the petition;
(d) Allegations of fact and objective evidence which would tend to establish or dispute the allegations found in the petition.

Section 5. Data Base and Inventory System. (1) The cabinet will develop and maintain a data base and inventory system which will permit evaluation of reclamation feasibility in areas covered by petitions.
(2) The cabinet will include in the data base and inventory system, information relevant to the criteria in Section 8 of this regulation.
(3) The cabinet will include in the data base and inventory system sufficient information to prepare the statements required in Section 8(4) of this regulation, including information on:
(a) The coal sources of Kentucky;
(b) The demand for Kentucky coal;
(c) The supply of Kentucky coal;
(d) The economy of Kentucky and its coal mining regions; and
(e) The environment and natural resources of Kentucky.
(4) The cabinet will include in the data base and inventory system relevant information that comes available from petitions, publications, studies, experiments, permit applications, surface coal mining operations, and other sources. The cabinet will also include relevant information received from the U.S. Fish and Wildlife Service, the Kentucky Heritage Commission, and the cabinet's Division of Air Pollution Control.

Section 6. Public Information. (1) Beginning immediately after the cabinet receives a petition [determines that a petition is complete], it shall compile and maintain a record consisting of the petition and all documents relating to the petition filed with or prepared by the cabinet. This record shall be maintained at the central office of the department in Frankfort and the regional office within whose district the petition site is located.
(2) The cabinet shall make the record, data base and information system available for public inspection, pursuant to KRS 61.870 et seq.
(3) The cabinet shall provide information on the petition procedures necessary to designate (or terminate a designation of) an area as unsuitable for surface coal mining operations.
(4) The cabinet shall describe how the inventory and data base can be used.
(5) Notwithstanding the requirements in subsections (1) through (4) of this section, if the cabinet determines that the disclosure of information relating to the location of properties proposed to be nominated to, or listed in the National Register of Historic Places would create a risk of destruction or harm to such properties, such disclosure will not be made.
(6) The cabinet shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment. The cabinet will not, however, provide proprietary information on the chemical and physical properties of coal.

Section 7. Hearing Requirements. (1) Within ten (10) months after receipt of a complete petition, the cabinet shall hold a public hearing in the locality of the area covered by the petition. However, [; provided that] when a permit application is pending before the cabinet and such application involves an area in a petition, the cabinet shall hold the hearing on the petition within ninety (90) days of its receipt. If all petitioners and intervenors agree, the hearing need not be held. The hearing shall be legislative in nature, without cross-examination of witnesses. No person shall bear the burden of proof or persuasion. The cabinet shall make a verbatim record of the hearing.
(2) The cabinet shall give notice of the date, time, and location of the hearing to:
(a) Local, areawide, state, and federal agencies which may have an interest in the decision on the petition;
(b) The petitioner and the intervenors; and
(c) Any person with an ownership or other interest in the area covered by the petition who has identified himself or herself to the cabinet as set forth in Section 4(3) of this regulation or who is otherwise actually known to the cabinet.
(3) Notice of the hearing shall be sent by certified mail to the petitioner and any intervenors and by regular mail to the persons designated in subsection (2)(a) and (c) of this section, and be postmarked not less than thirty (30) days before the scheduled date of the hearing.

(4) The cabinet shall notify the general public of the date, time, and location of the hearing by placing an advertisement in the newspaper of largest circulation according to the definition in KRS 424.110 to 424.120, in the county of the are covered by the petition once a week for two (2) consecutive weeks and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must be published four (4) and five (5) weeks before the scheduled date of the public hearing.

(5) The cabinet may consolidate in a single hearing, the hearings required for each of several petitions which relate to areas in the same locale.

(6) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

Section 8. Criteria and Decision. (1) The cabinet shall designate an area as unsuitable for all or certain types of surface coal mining operations if, upon petition, it determines that reclamation is not technologically and economically feasible under the performance standards of Title 405, Chapters 7 through 24 at the time of designation.

(2) The cabinet may designate an area as unsuitable for all or certain types of surface coal mining operations if, upon petition, it is determined that the surface coal mining operations will:

(a) Be incompatible with existing land use policies, plans, or programs adopted by state, areawide, or local agencies with management responsibilities for the areas which would be affected by such surface coal mining operations;

(b) Affect fragile or historic lands in which the surface coal mining and reclamation operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems;

(c) Affect renewable resource lands in which the surface coal mining operations could result in substantial loss or reduction of the long-range availability of water supplies;

(d) Affect renewable resource lands in which the surface coal mining operations could result in substantial loss or reduction of the long-range productivity of food and fiber products; or

(e) Affect natural hazard lands in which the surface coal mining operations could substantially endanger life and property.

(3) If the cabinet does not designate a petitioned area under subsection (2) of this section, the secretary may direct that any future permits issued for the area contain specific requirements for minimizing the impact of surface coal mining operations on the feature that was the subject of the petition.

(4) Prior to designating any land areas as unsuitable for surface coal mining operations, the cabinet shall prepare a detailed statement, using existing and available information, on the potential coal resources of the area, the effect of the action on demand for, and supply of, Kentucky coal, and the environmental and economic impacts of designation.

(5) In reaching a decision, the secretary shall use:

(a) The relevant information contained in the data base and inventory system;

(b) Relevant information provided by other governmental agencies; [and]

(c) The detailed statement prepared in response to subsection (4) of this section; and

(d) [(c)] Any other relevant information or analysis submitted during the comment period and public hearing.

(6) A final written decision shall be issued by the secretary including a statement of reasons, within sixty (60) days of completion of the public hearing, or, if no public hearing is held, then within twelve (12) months after receipt of the complete petition. The cabinet shall simultaneously send the decision by certified mail to the petitioner, all intervenors, and to the Regional Director of the Office of Surface Mining, U.S. Department of the Interior; and by regular mail to all other persons involved in the proceedings.

Section 9. Administrative and Judicial Review. (1) Following any order or determination of the cabinet concerning completeness or frivolousness of a petition, any person with an interest which is or may be adversely affected may request a hearing on the reasons for the order or determination, in accordance with 405 KAR 7:090. Any person with an interest which is or may be adversely affected and who has participated in an administrative hearing under this subsection shall have the right to judicial review as provided in KRS 350.610(6).

(2) Any person with an interest which is or may be adversely affected by a final decision of the secretary under Section 8(6) of this regulation shall have the right to judicial review as provided in KRS 350.610(6).

Section 10. Map. The cabinet shall maintain a current map of areas designated as unsuitable for all or certain types of surface coal mining operations at each regional office and at the central office in Frankfort. Copies of such maps will be available for inspection and copying as prescribed in the Open Records Act, KRS 61.872 to 61.884. Such maps will periodically be distributed to appropriate federal, state, areawide, and local government agencies.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered.

Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This regulation establishes the process and criteria for reviewing petitions and designating lands unsuitable for all or certain types of surface coal mining operations or terminating such designations. The proposed amendment modifies the provisions for determining a petition to be frivolous; requires the cabinet to advertise the determination that a petition is frivolous or incomplete; specifies that information concerning the location of properties listed in, or proposed to be nominated to, the National Register of Historic Places shall not be disclosed to the public if such disclosure would place the property at risk; requires disclosure of information regarding designations, including mineral or elemental content which is potentially toxic in the environment, but prohibits disclosure of proprietary information on the chemical and physical properties of coal; clarifies that no person shall bear the burden of proof or persuasion at a hearing; clarifies that the secretary in making his decision shall use, among other things, the detailed statement prepared by the cabinet regarding the potential coal resources of the area, the effect of the action on the supply and demand for Kentucky coal, and the environmental and economic impacts of designation; and requires that certain persons involved in designation proceedings shall be notified of the cabinet's final decision by regular mail. This regulation will affect all individuals or entities who petition the cabinet to either designate an area as unsuitable for all or certain types of surface coal mining operations, or to have an existing designation terminated. Since the permanent regulatory program took effect in 1982, 16 such petitions have been submitted, an average of less than three per year. The regulation also affects, directly or indirectly, the general public which lives in, or owns property in, the coal regions of Kentucky.

(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: The proposed amendment requires the cabinet to initiate a record of each petition upon receipt, not after they are determined to be complete. Since less than half of all petitions received are determined to be complete, the additional cost of preparing records for petitions which never reach a state of completeness will be incurred. The requirement that the cabinet publish a newspaper notice of each petition which is determined to be frivolous or incomplete will create additional cost, but such cost will be minor due to the small number of petitions. The provision that certain persons involved in the designation process shall be notified of the cabinet's decision by regular mail (rather than by certified mail as required for petitioner, intervenors, etc.) will lead to some savings in mailing costs.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None 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: 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. Tiering is not applicable to this proposed amendment since these requirements must, under the federal and Kentucky surface mining laws and regulations, apply equally to all applicants under Title 405, Chapters 7 through 24.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 762, as revised at 48 FR 41350, September 14, 1983; and 30 CFR 764 as revised at 48 FR 41351, September 14, 1983.

2. State compliance standards. This regulation establishes the process and criteria for reviewing petitions and designating lands unsuitable for all or certain types of surface coal mining operations or terminating such designations. The proposed amendment modifies the provisions for determining a petition to be frivolous; requires the cabinet to advertise the determination that a petition is frivolous or incomplete; specifies that information concerning the location of properties listed in, or proposed to be nominated to, the National Register of Historic Places shall not be disclosed to the public if such disclosure would place the property at risk; requires disclosure of information regarding designations, including mineral or elemental content which is potentially toxic in the environment, but prohibits disclosure of proprietary information on the chemical and physical properties of coal; clarifies that no person shall bear the burden of proof or persuasion at a hearing; clarifies that the secretary in making his decision shall use, among other things, the detailed statement prepared by the cabinet regarding the potential coal resources of the area, the effect of the action on the supply and demand for Kentucky coal, and the environmental and economic impacts of designation; and requires that certain persons involved in designation proceedings shall be notified of the cabinet's final

decision by regular mail.

3. Minimum or uniform standards contained in the federal mandate. 30 CFR 762 establishes the minimum criteria to be used in determining whether lands should be designated as unsuitable for all or certain types of surface coal mining operations. 30 CFR 764 establishes minimum procedures and standards to be included in each approved state program for designating lands as unsuitable for all or certain types of surface coal mining operations and for terminating such designations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation
and Enforcement
(Proposed Amendment)

405 KAR 24:040. Areas unsuitable for mining [Permit application review].

RELATES TO: KRS 350.465(2)(b), 350.610
PURSUANT TO: KRS Chapter 13A, 350.465(2), 350.610
NECESSITY AND FUNCTION: KRS 350.465(2) and 350.610 require the cabinet to prepare, develop, and promulgate a permanent regulatory program for the implementation of SMCRA containing procedures similar to that Act. This regulation sets forth procedures for reviewing applications for surface coal mining and reclamation operation permits to determine whether surface coal mining and reclamation operations are limited or prohibited.

Section 1. General. The cabinet shall prohibit or limit surface coal mining and reclamation operations on or near certain private, federal, and other public lands designated by Congress in the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87), except for operations which existed on August 3, 1977, or were subject to valid existing rights on that date. The cabinet shall also prohibit certain surface coal mining operations on lands designated unsuitable for all or certain types of surface coal mining and reclamation operations under 405 KAR 24:030.

Section 2. Permit Application Review. Except for operations which existed on August 3, 1977, unless the required approvals or waivers are obtained, upon receipt of a complete application for a surface coal mining and reclamation operation permit, and subject to valid existing rights, the cabinet shall review the application and deny the permit if it determines that the lands on which the proposed operation would be conducted include:

(1) Lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, 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 study rivers or study river corridors as established in any guidelines pursuant to that Act, and the National Recreation Areas designated by Act of Congress;

(2) Lands within 300 feet, measured horizontally, of any public park, public building, school, church, community or institutional building; or

(3) Lands within 100 feet, measured horizontally, of a cemetery;

(4) Lands where mining [which] will adversely affect any publicly owned park or any [publicly owned] places included on the National Register of Historic Places unless jointly approved by the cabinet and the federal, state, or local agency with jurisdiction over the park or place [all affected agencies] as set forth in paragraphs (a) and (b) [through (c)] of this subsection.

(a) The cabinet shall transmit to the federal, state, or local government agencies with jurisdiction over [management responsibility for] the public park or historic place, a copy of the completed permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has thirty (30) days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The cabinet, upon request by the appropriate agency, may grant an extension to the thirty (30) day period of an additional thirty (30) days. Failure to interpose an objection within thirty (30) days or the extended period granted shall constitute an approval of the proposed permit by the agency.

[(b) The cabinet shall request the appropriate agency to respond within thirty (30) days from the receipt of the request and to indicate its approval or disapproval.]

(b) [(c)] A permit for a surface coal mining and reclamation operation shall not be issued unless jointly approved by all affected agencies.

(5) Lands within 300 feet, measured horizontally, from any occupied dwelling, unless the owner of the dwelling has provided a written waiver consenting to surface coal mining operations closer than 300 feet.

(a) The applicant shall submit with the permit application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent [consenting] to such an operation within a closer distance of the dwelling specified in the waiver. Valid waivers obtained prior to August 3, 1977 are valid for the purposes of this paragraph. Waivers obtained from previous owners shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to state law or if the mining has proceeded to within the 300-foot limit prior to the date of purchase.

(b) The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver. In such case, a copy of the lease or deed must be included with the permit application.

(c) This subsection shall not apply when the part of the mining operation which is within 300 feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling.

(6) Lands within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way). The cabinet may allow areas within 100 feet to be affected or may allow the public road to be closed or relocated, provided that, the cabinet shall:

(a) Require the applicant to obtain any necessary approval of the governmental authority with jurisdiction over the public road;

(b) Provide opportunity for a public hearing in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected;

(c) Publish notice in a newspaper of largest bona fide circulation according to the definition in KRS 424.110 to 424.120 in the county of the affected area at least two (2) weeks before such public hearing;

(d) Make a written finding within thirty (30) days after any such hearing or after any public comment period ends if no hearing is held, on the basis of information received at the public hearing as to whether the interests of the public and affected landowners will be protected. No mining shall be allowed within 100 feet of the outside right-of-way line of a road nor may a road be relocated or closed unless the cabinet determines that the interests of the public and affected landowners will be protected.

(7) Federal lands within the boundaries of any national forest, unless specifically approved by the Secretary of the Interior.

Section 3. Assistance Review. (1) If the cabinet is unable to determine whether the proposed surface coal mining operation is located within the distances or boundaries of any of the lands identified in Section 2 of this regulation, the cabinet shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the agency that it must respond in writing within thirty (30) days of receipt of the request. [Upon failure of the agency to respond in writing within the thirty (30) day period, the cabinet shall presume that the proposed surface coal mining operation is not located within the boundaries of any such lands.]

(2) The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have thirty (30) days from receipt of notification in which to respond.

(3) The cabinet, upon request by the appropriate agency, shall grant an extension to the thirty (30) day period of an additional thirty (30) days. If no response is received within the thirty (30) day period or within the extended period granted, the cabinet may make the necessary determination based upon the information it has available.

Section 4. Valid Existing Rights. (1) Except for haul roads, "valid existing rights" means property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on such lands either:

(a) Had been validly issued or had made a good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct surface coal mining operations on those lands, application for such permits being deemed to constitute good faith efforts to obtain such permits; or

(b) Can demonstrate to the cabinet that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

(2) For haul roads, "valid existing rights" means:

(a) A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

(b) Any other road in existence as of August 3, 1977.

(3) "Valid existing rights" does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining.

(4) Interpretation of the terms of the documents relied upon to establish existing rights shall be based upon the laws of Kentucky.

(5) A determination that coal is "needed" will be based upon, but not be limited to, a finding that additional production originating on adjacent land is necessary to preclude a financial hardship on the mining operation measured by standard accounting and financial procedures, provided that:

(a) A fair rate-of-return on invested capital is not achievable on existing permitted land;

(b) A less than fair rate-of-return on invested capital is attributable to the provisions of this chapter; and

(c) The operator can establish that the adjacent unpermitted land is part of the operator's mining plan.

(6) Where an area comes under the protection of Section 2 of this regulation after August 3, 1977, valid existing rights shall be found if, on the date the protection comes into existence, a validly authorized surface coal mining operation exists on that area.

Section 5. Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations. Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to this chapter does not prohibit coal exploration operations in the area, if conducted in accordance with KRS Chapter 350 and Title 405, Chapters 7 through 20. Exploration operations on any lands designated unsuitable for surface coal mining operations shall be approved only when the cabinet finds that the proposed exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining operations.

Section 6. Lands Designated Unsuitable. (1) If the cabinet determines that the proposed surface coal mining operation is not prohibited by Section 2 of this regulation, it may

nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to 405 KAR 24:030.

(2) The cabinet shall not issue permits which are inconsistent with designations made pursuant to 405 KAR 24:030 and this regulation.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This regulation sets forth certain areas where surface coal mining and reclamation operations are expressly limited or prohibited, and establishes procedures for reviewing permit applications when such areas are present. The proposed amendment changes the title from "permit application review" to "areas unsuitable for mining"; adds federal study rivers or study river corridors under the Wild and Scenic Rivers Act as lands unsuitable for mining; clarifies agency coordination procedures when lands are involved where mining will adversely affect publicly owned parks or any places included on the National Register of Historic Places; changes the language required in a waiver to permit surface coal mining operations within 300 feet of an occupied dwelling, and provides that such waivers shall remain effective for subsequent owners under certain circumstances; states that a waiver is not necessary to conduct mining operations within 300 feet of an occupied dwelling when the operation is a haul road and a public road lies between the haul road and the dwelling; adds the provision that the cabinet may allow public roads to be closed when mining operations are proposed within 100 feet of the right-of-way line; provides that no mining shall be allowed within 100 feet of a public road right-of-way, nor a road be closed or relocated unless the cabinet determines that the interests of the public and affected landowners will be protected; requires that the National Park Service and the U.S. Fish and Wildlife Service must be notified of and be given the opportunity to comment upon any request for a valid existing rights determination pertaining to areas within their jurisdiction; provides for extensions of the time limit for outside agency assistance review, upon request; and specifies that when the protection afforded by Section 2 comes into existence after August 3, 1977, valid existing rights may still be found if a validly authorized surface coal mining operation exists on the site when the protection comes into existence (i.e. "continually created" valid existing rights); and clarifies that where operations are not prohibited under Section 2 they may nonetheless be designated unsuitable for mining pursuant to the petition process. This regulation will affect all individuals or entities who petition the cabinet to either designate an area as unsuitable for all or certain types of surface coal mining operations, or to have an existing designation terminated. Since the permanent regulatory program took effect in 1982, 16 such petitions have been submitted, an average of less than three per year. The regulation also affects, directly or indirectly, the general public which lives in, or owns property in, the coal regions of Kentucky.

(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None 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: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: The title was changed from "permit application review" to "areas unsuitable for mining" to more accurately describe the content of the regulation.

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment since these requirements must, under the federal and Kentucky surface mining laws and regulations, apply equally to all applicants under Title 405, Chapters 7 through 24.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 761, as revised at 48 FR 41348, September 14, 1983; 51 FR 25819, July 16, 1986; 51 FR 26385, July 23, 1986; 51 FR 41961, November 20, 1986; and 52 FR 4261, February 10, 1987.

2. State compliance standards. This regulation sets forth certain areas where surface coal mining and reclamation operations are expressly limited or prohibited, and establishes procedures for reviewing permit applications when such areas are present. The proposed amendment changes the title from "permit application review" to "areas unsuitable for mining"; adds federal study rivers or study river corridors under the Wild and Scenic Rivers Act as lands unsuitable for mining; clarifies agency coordination procedures when lands are involved where mining will adversely affect publicly owned parks or any places included on the National Register of Historic Places; changes the language required in a waiver to permit surface coal mining operations within 300 feet of an occupied dwelling, and provides that such waivers shall remain effective for subsequent owners under certain circumstances; states that a waiver is not necessary to conduct mining operations within 300 feet of an occupied dwelling when the operation is a haul road and a public road lies between the haul road and the dwelling; adds the provision that the cabinet may allow public roads to be closed when mining operations are proposed within 100 feet of the right-of-way line; provides that no mining shall be allowed within 100 feet of a public road right-of-way, nor a road be closed or relocated unless the cabinet determines that the interests of the public and affected landowners will be protected; requires that the National Park Service and the U.S. Fish and Wildlife Service must be notified of and be given the opportunity to comment upon any request for a valid existing rights determination pertaining to areas within their jurisdiction; provides for extensions of the time limit for outside agency assistance review, upon request; and specifies that when the protection afforded by Section 2 comes into existence after August 3, 1977, valid existing rights may still be found if a validly authorized surface coal mining operation exists on the site when the protection comes into existence (i.e. "continually created" valid existing rights); and clarifies that where operations are not prohibited under Section 2 they may nonetheless be designated unsuitable for mining pursuant to the petition process.

3. Minimum or uniform standards contained in the federal mandate. 30 CFR 761 sets forth procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be authorized in light of the prohibitions and limitations in Section 522(e) of P.L. 95-87, 30 U.S.C 1272(e) under regulatory programs in accordance with 30 U.S.C. 1201 et seq., P.L. 95-87.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

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 July 14 [May 13], 1988 and hereinafter should be referred to as Kentucky State Reformatory 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.

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 01-00-19	Personal Service Contract Personnel
KSR 01-00-20	Consent Decree Notification to Inmates
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
KSR 03-00-10	Workers' Compensation
KSR 03-00-14	Prohibited Employee Conduct, Disciplinary Actions, and Appeal Process
KSR 03-00-15	Affirmative Action Program
KSR 03-00-16	Confidentiality of Personnel Records
KSR 03-00-19	Establishment of Personnel Records and Employee Right to Challenge Information Contained Therein
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 03-00-24	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 05-00-01	Officers' Daily Housing Security and Safety Log (Added 7/14/88)
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	Kentucky Open Records Law and Release of Psychological/ Psychiatrict Information
KSR 07-00-02	Institutional Tower Room Regulations
KSR 07-00-04	Handling of PCB Articles and Containers
KSR 07-00-05	Proper Removal of Transformers
KSR 07-00-06	Asbestos Abatement
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family (Amended 7/14/88)
KSR 08-00-08	Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery
KSR 08-00-09	Emergency Preparedness Training
KSR 09-00-04	Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05	Gate I Entrance and Exit Procedure
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-14	Use of Force
KSR 09-00-21	Crime Scene Camera [(Amended 5/13/88)]
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence (Amended 7/14/88)
KSR 09-00-23	Drug Abuse Testing [(Amended 5/13/88)]
KSR 09-00-25	Inmate Motor Vehicle Operator's License
KSR 09-00-26	Contraband Outside Institutional Perimeter
KSR 09-00-27	Construction Crew Entry/Exit
KSR 09-00-28	Restricted Areas
KSR 10-00-01	Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records
KSR 10-00-02	Unit D - General Operational Procedures
KSR 10-00-03	Unit D - Inmate Tracking System and Records System
KSR 10-00-04	Unit D - Administrative Segregation
KSR 10-00-05	Unit D - Disciplinary Segregation
KSR 10-00-06	Unit D - Protective Custody
KSR 10-00-07	Unit D - Geriatrics
KSR 10-00-08	Unit D - Safekeepers
KSR 10-00-09	Unit D - Hold Ticket Residents
KSR 10-00-10	Unit D - Inmate Legal Access
KSR 10-00-11	Unit D - Behavior Problem Control
KSR 10-00-12	Unit D - Designated Staff Visits
KSR 10-00-13	Unit D - Property Room Access
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
KSR 12-00-07	Regulations for Inmate Barbershop
KSR 13-00-01	Identification of Mentally Retarded Inmates
KSR 13-00-02	Hospital Operations, Rules and Regulations
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	Infection Control
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 14-00-05	Inmate Marriages (Amended 7/14/88)
KSR 14-00-06	Inmate Legal Aides (Amended 7/14/88)
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) (Amended 7/14/88)
KSR 15-00-04	Restoration of Forfeited Good Time
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 15-00-08	Firehouse Living Area
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 - Assessment/Classification Center
KSR 17-00-03	Notifying Inmates' Families of Admission and Procedures for Mail and Visiting (Amended 7/14/88)
KSR 17-00-04	Assessment/Classification Center Operations, Rules and Regulations
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures
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
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 5/13/88)]
KSR 21-00-02	Inmate Library Services (Amended 7/14/88)
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate News Magazine
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	Preparole Progress Report

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 23, 1988 at 9 a.m., in the State Office Building Auditorium. 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 Jones
(1) Type and number of entities affected: 488 employees of the Kentucky State Reformatory, 1441 inmates, 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 regulations 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: Monthly 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.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:050. Luther Luckett Correctional Complex.

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 July 14 [February 12], 1988 and hereinafter should be referred to as Luther Luckett Correctional Complex 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.

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 02-07-01	Screening Disbursements from Inmate Personal Accounting
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 03-02-02	Replacement of Damaged or Destroyed Personal Property
[LLCC 03-03-01	Employee Grievance Mechanism (Deleted 7/14/88)]
LLCC 03-04-01	Employee Records
LLCC 03-05-01	Personnel Registers
[LLCC 03-06-01	Work Planning: Employee Evaluations and Evaluation Control (Deleted 7/14/88)]
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 (Deleted 7/14/88)]
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 08-05-01	Psychological and Psychiatric Reports

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	Postparole 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 12-01-02	Disciplinary Segregation Time Calculation (WTR) (Amended 7/14/88)
LLCC 12-04-01	Guidelines for (7E) PC Unit/General Living Conditions
LLCC 13-01-01	Dining Room Guidelines [(Amended 2/12/88)]
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 13-08-01	OJT Food Service Training Placement
LLCC 14-01-01	Sanitation, Living Condition Standards, and Clothing 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 15-17-01	Serious and Infectious Diseases
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 [(Amended 2/12/88)]
LLCC 18-01-02	Issuance of Legal Mail to Inmate Population
LLCC 18-02-01	Inmate Visiting
LLCC 18-02-03	Extended Visit and Furloughs
LLCC 18-02-04	Meritorious Visits
LLCC 18-03-01	Entry and Identification of Visitors for Inmate Visitation [(Added 2/12/88)]
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	Preparole Progress Report
LLCC 28-04-02	Parole Eligibility Dates

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 23, 1988 at 9 a.m., in the State Office Building Auditorium. 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 Jones
(1) Type and number of entities affected: 215 employees of the Luther Luckett Correctional Complex, 619 inmates, 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 regulations 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: Monthly 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.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:060. Northpoint Training Center.

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 July [June] 14, 1988 and hereinafter should be referred to as Northpoint Training Center 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.

NTC 01-03-01	Organization and Assignment of Responsibilities
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 02-02-02	Warden's Participation in the Agency Budgeting Process
NTC 02-03-01	Fiscal Management: Audits
NTC 02-04-01	Internal Control and Monitoring of Accounting Procedures
NTC 02-08-01	Inmate Canteen
NTC 02-10-01	Insurance Coverage
NTC 02-12-01	Inmate Personal Accounts
NTC 03-01-01	Employee Dress and Personal Appearance
NTC 03-02-01	Prohibited Employee Conduct
NTC 03-03-01	Staff Members Suspected of Being Under the Influence of Intoxicants
NTC 03-04-01	Shift/Post Assignments and Transfers
NTC 03-06-01	Worker's Compensation
NTC 03-08-01	Procedures for New Employees Reporting for Employment
NTC 03-09-01	Maintenance, Confidentiality and Challenge of Information Contained in Employee Personnel File
NTC 03-10-01	Employment of Ex-offenders
NTC 03-11-01	Submission of Northpoint Training Center Staff Recommendation/ Changes
NTC 03-11-02	Employee Suggestion System
NTC 03-13-01	Travel Reimbursement for Official Business and Professional Meetings
NTC 03-14-01	Procedures for Selection, Retention, Promotion, and Lateral Transfer of Merit System Employees
NTC 03-14-02	Procedures for Promotional Opportunities
NTC 03-15-01	Time and Attendance; Accumulation and Use of Accrued Time
NTC 03-15-02	Procedures for Control of Excessive Leave Use
NTC 03-15-03	Inclement Weather and Emergency Conditions
NTC 03-16-01	Affirmative Action and EEO
NTC 03-17-01	Employee Grievance Procedure
NTC 03-18-01	Educational Assistance Program
[NTC 03-18-02	Educational Achievement Award (Deleted 7/14/88)]
NTC 03-19-01	Holding of Second Jobs by Employees
NTC 03-20-01	Assistance and Counseling Services for Employees and their Families
NTC 03-21-01	Procedures for Employee Evaluation System
NTC 04-01-01	Training and Staff Development
NTC 04-04-01	Firearms and Chemical Agents Training
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	The Fire and 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 (Amended 7/14/88)
NTC 08-07-01	Safety Standards
NTC 10-01-01	Special Management Inmates (SMU)
NTC 10-02-01	Security Guidelines for Special Management Inmates
NTC 10-03-01	Protective Custody (Amended 7/14/88)
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	Health Standards/Regulations for Food Service Employees
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	Issuance of Personal Hygiene Products
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
NTC 13-03-01	Sick Call and Pill Call
NTC 13-04-01	Utilization of Pharmaceutical Products
NTC 13-05-01	Dental Services
NTC 13-06-01	Licensure and Training Standards
NTC 13-07-01	Provisions for Health Care Delivery
NTC 13-08-01	Medical and Dental Records
NTC 13-09-01	Special Diets
NTC 13-11-01	Inmate Health Screening and Evaluation
NTC 13-12-01	Special Health Care Programs [(Amended 6/14/88)]
NTC 13-17-01	Inmates Assigned to Health Services
NTC 13-19-01	Mental Health Care Program
NTC 13-19-03	Suicide Prevention and Intervention Program
NTC 13-20-01	Infectious Disease
NTC 13-21-01	Vision Care/Optometry Services
NTC 13-22-01	Informed Consent
NTC 13-23-01	Special Needs Inmates
NTC 14-01-01	Legal Services Program
NTC 14-02-01	Inmate Grievance Procedure
NTC 14-03-01	Inmate Rights and Responsibilities
NTC 14-03-02	Board of Claims
NTC 14-04-01	Inmate Search Policy
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 15-02-03	Hearing Officer
NTC 15-03-01	Rules for Inmates Assigned to Outside Detail
NTC 15-03-02	Rules and Regulations for General Population Dormitories (Amended 7/14/88)
NTC 15-04-01	Inmate Identification
NTC 16-01-01	Mail Regulations
NTC 16-02-01	Visiting
NTC 16-02-02	Extended and Special Visits
NTC 16-02-03	Honor Dorm Visiting
NTC 16-03-01	Inmate Furloughs
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	Assessment/Orientation
NTC 18-01-01	Preparole Progress Report
NTC 18-02-01	Classification
NTC 18-02-02	Classification - 48 Hour Notification
NTC 18-03-01	Special Notice Form
NTC 18-05-01	Transfers of Inmates
NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01	Inmate Work Program
NTC 19-01-03	Temporary Leave from Job Assignment
NTC 19-02-01	Correctional Industries
NTC 19-02-02	Guidelines for Correctional Industries
NTC 20-01-01	Academic School Program
NTC 20-02-01	Vocational School [(Added 6/14/88)]
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
NTC 24-05-01	Unit Management [(Amended 6/14/88)]
NTC 25-01-01	Release Preparation Program
NTC 25-01-02	Temporary Release/Community Center Release
NTC 25-01-03	Graduated Release
NTC 25-02-01	Funeral Trips and Bedside Visits
NTC 25-03-01	Inmate Release Procedure
NTC 26-01-01	Citizen Involvement and Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 23, 1988 at 9 a.m., in the State Office Building Auditorium. 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 Jones
(1) Type and number of entities affected: 283 employees of the Northpoint Training Center, 625 inmates, 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 regulations 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: Monthly 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.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:070. Kentucky Correctional Institution for Women.

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 July 14 [June 10], 1988 and hereinafter should be referred to as Kentucky Correctional Institution for Women 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.

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 02-02-04	Institution Purchasing Procedures
KCIW 02-03-01	Inventory Control of Nonexpendable Personal Property
KCIW 02-03-03	Criteria for Selection of Bidders and Vendors
KCIW 02-04-01	Accounting Procedures [(Amended 6/10/88)]
KCIW 02-05-01	Inmate Canteen/Staff Canteen
KCIW 02-07-01	Release of CETA Money Earned
KCIW 03-01-01	Travel Expense Reimbursement
KCIW 03-02-01	General Orders for Staff

KCIW 03-02-02	Inclement Weather and Emergency Conditions
KCIW 03-03-01	Employee Grievance Procedure
KCIW 03-05-01	Employee Personnel File
KCIW 03-06-01	Affirmative Action 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 (Amended 7/14/88)
KCIW 06-01-03	Storage of Expunged Records [(Amended 6/10/88)]
KCIW 10-01-01	Special Management Unit General Operation and Regulations
KCIW 10-01-02	Special Management Unit Programs, Placement and Review
KCIW 10-01-04	Special Security Inmates
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 Workers
KCIW 11-03-02	General Guidelines for Food Service Workers
KCIW 11-04-01	Health Regulations and General Guidelines for the Food Service Area
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 13-09-01	Suicide Prevention and Intervention Program
KCIW 13-11-01	Infection Control [(Added 6/10/88)]
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 [(Amended 6/10/88)]
KCIW 15-01-02	Adjustment Committee Procedures and Programs
KCIW 15-03-01	Inmate Rule Book
KCIW 15-04-01	Incentive Levels System (Amended 7/14/88)
KCIW 15-06-01	Restriction Guidelines
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	Commercial Vendor Packages, Appliance 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 Guidelines
KCIW 18-01-02	Institutional Housing Assignments
KCIW 18-02-01	Classification Procedures
KCIW 18-05-01	Special Needs Inmates
KCIW 18-06-01	Institutional 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, Upgrade 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	Preparole Progress Report
KCIW 25-02-01	Temporary Release/Community Center
KCIW 25-02-02	Furloughs
KCIW 25-03-01	Escorted Leave into the Community

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 23, 1988 at 9 a.m., in the State Office Building Auditorium. 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 Jones
(1) Type and number of entities affected: 100 employees of the Kentucky Correctional Institution for Women, 195 inmates, 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 regulations 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: Monthly 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.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:110. Roederer Farm Center.

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 authorizes 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 July 14 [March 15], 1988 and hereinafter should be referred to as Roederer Farm Center 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.

RFC 01-04-02 Extraordinary Occurrence Procedure (Amended 7/14/88)
RFC 01-06-01 Inmate Access to and Communication with RFC Staff (Amended 7/14/88)
RFC 01-07-01 Institutional Legal Assistance
RFC 01-08-01 Public Information and News Media Access
RFC 01-09-01 Staff Participation in Professional Organization and Conferences; Provisions for Leave and Reimbursement for Expenses
RFC 01-10-01 RFC Cooperation with Outside Bodies Including Courts, Governmental Legislative, Executive, and Community Agencies (Amended 7/14/88)
RFC 01-12-01 Institutional Duty Officer - Responsibilities (Amended 7/14/88)
RFC 02-01-01 Fiscal Management: Organization
RFC 02-01-02 Fiscal Management: Accounting Procedures (Amended 7/14/88)
RFC 02-01-03 Fiscal Management: Agency Funds (Amended 7/14/88)
RFC 02-01-04 Fiscal Management: Insurance
RFC 02-02-01 Fiscal Management: Budget (Amended 7/14/88)
RFC 02-02-02 Inmate Control of Personal Funds
RFC 02-02-03 Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays (Amended 7/14/88)
RFC 02-02-04 Inmate Accounts (Amended 7/14/88)
RFC 02-03-01 Fiscal Management: Audits
RFC 02-04-01 Purchase Orders
RFC 02-04-02 Processing of Invoices
RFC 02-06-01 Property Inventory
RFC 03-01-01 General Guidelines for RFC Employees
RFC 03-01-02 Service Regulations, Attendance Accumulation and Use of Leave
RFC 03-03-01 Employee Grievance Procedures
RFC 03-04-01 Personnel Records
RFC 03-05-01 Personnel Vacancies: Promotion Board
RFC 03-06-01 Work Planning: Employee Evaluations and Evaluation Control
RFC 03-07-01 Affirmative Action - E.E.O.
RFC 03-08-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, and Volunteers
RFC 03-09-01 Personnel Manning Review
RFC 03-10-01 Employee's Handbook
RFC 03-11-01 Replacement of Damaged or Destroyed Personal Property
RFC 03-12-01 Corrections Cabinet Staff Members Entering the Roederer Farm Center While Being Under the Influence
RFC 03-13-01 Staff/Visitor Meals
RFC 04-01-01 Employee Training and Development (Amended 7/14/88)
RFC 05-01-01 Information System (Amended 7/14/88)
RFC 06-01-01 Offender Records (Amended 7/14/88)
RFC 06-02-01 Use of Inmate Records/Security of Inmate Records (Amended 7/14/88)
RFC 06-03-01 Records Release of Information (Amended 7/14/88)
RFC 06-03-02 Storage of Expunged Records (Amended 7/14/88)
RFC 06-04-01 Court Trips (Amended 7/14/88)
RFC 06-04-02 Receipt of Order of Appearance (Amended 7/14/88)
RFC 08-01-01 Fire Prevention (Amended 7/14/88)
RFC 08-02-01 Fire Procedures (Amended 7/14/88)
RFC 08-02-02 Fire Extinguishers and Their Use
RFC 08-08-01 Hazardous Communication Program [Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances] (Amended 7/14/88)

RFC 09-04-03 Duties and Responsibilities of the Fire Safety Officer (Amended 7/14/88)
RFC 09-06-01 Search Policy/Disposition of Contraband (Amended 7/14/88)
RFC 09-09-02 Drug Abuse Testing (Amended 7/14/88)
RFC 09-09-03 Breathalyzer (Amended 7/14/88)
RFC 09-14-01 Restricted Areas (Amended 7/14/88)
RFC 09-22-01 Use of Force (Amended 7/14/88)
RFC 09-24-01 Informants (Amended 7/14/88)
RFC 10-01-01 Special Management Inmates
RFC 11-01-01 Food Services: General Guidelines
RFC 11-02-01 Food Service: Security
RFC 11-03-01 Dining Room Guidelines
RFC 11-04-01 Food Service: Meals
RFC 11-04-02 Food Service: Menu, Nutrition and Special Diets
RFC 11-05-01 Food Service: Kitchen and Dining Room Inmate Work Responsibilities
RFC 11-05-02 Medical Screening of Food Handlers
RFC 11-06-01 Food Service: Inspections and Sanitation
RFC 11-07-01 Food Service: Purchasing, Storage and Farm Products
RFC 11-08-01 Staff/Visitor Meals
RFC 12-01-01 Sanitation, Living Conditions Standards, Clothing Issues
RFC 12-01-02 Bed Areas - Assignment/Condition Standards [(Amended 3/15/88)]
RFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry
RFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule
RFC 12-03-02 Barber Shop Services and Equipment Control
RFC 12-04-01 Institutional Inspections
RFC 12-05-01 Fire Safety
RFC 12-05-02 Use of Noncombustible Receptacle
RFC 12-06-01 Insect and Vermin Control
RFC 13-01-01 Organization of Health Services (Amended 7/14/88)
RFC 13-02-01 Health Maintenance Services: Sick Call and Pill Call (Amended 7/14/88)
RFC 13-03-01 Dental Policy/Sick Call (Amended 7/14/88)
RFC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 7/14/88)
RFC 13-05-02 Licensure and Training Standards (Amended 7/14/88)
RFC 13-06-01 Suicide Prevention and Intervention Program (Added 7/14/88)
RFC 13-06-02 First Aid and CPR Training Program (Added 7/14/88)
RFC 13-06-03 Emergency Medical and [/] Dental Care Services (Amended 7/14/88)
RFC 13-06-04 First Aid/CPR Training Program
RFC 13-07-01 Health Records (Amended 7/14/88)
RFC 13-07-03 Use of Pharmaceutical Products (Added 7/14/88)
RFC 13-08-01 Special Diets (Added 7/14/88)
RFC 13-09-01 Notification of Inmate Family in the Event of Serious Illness, Surgery, or Inmate Death (Added 7/14/88)
RFC 13-10-01 Health Education/Special Health Programs (Amended 7/14/88)
RFC 13-11-01 Informed Consent (Amended 7/14/88)
RFC 13-12-01 Mental Health/Provision of Psychiatric Services by KCPC
RFC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center (Amended 7/14/88)
RFC 13-13-01 Identification of Special Needs Inmates (Added 7/14/88)
RFC 13-15-01 Medical Restraints (Amended 7/14/88)
RFC 13-16-01 Specialized Health Services (Added 7/14/88)
RFC 13-17-01 Vision Care and [/] Optometry Services (Amended 7/14/88)
RFC 13-18-01 Serious and Infectious Diseases (Added 7/14/88)
RFC 14-01-01 Inmate Rights and Responsibilities (Amended 7/14/88)
RFC 14-02-01 Legal Services Program (Amended 7/14/88)
RFC 14-03-01 Inmate Grievance Procedure (Amended 7/14/88)
RFC 14-04-01 Inmate Participation in Authorized Research (Amended 7/14/88)
RFC 15-01-01 Due Process and [/] Disciplinary Procedures (Amended 7/14/88)
RFC 15-02-01 Prehearing [Hearing] Detention and Protective Custody (Amended 7/14/88)
RFC 16-01-01 Inmate Visiting
RFC 16-02-01 Telephone Communications
RFC 16-03-01 Mail Regulations (Amended 7/14/88)
RFC 16-03-02 Christmas Packages (Amended 7/14/88)
RFC 17-01-01 Assessment/Orientation Procedure (Amended 7/14/88)
RFC 17-02-01 Inmate Reception Process (Amended 7/14/88)
RFC 17-03-01 Inmate Personal Property and Property Control (Amended 7/14/88)
RFC 17-04-01 Unauthorized Items (Amended 7/14/88)
RFC 17-05-01 Inmate Canteen (Amended 7/14/88)
RFC 18-01-01 Institutional Classification Committee (Amended 7/14/88)
RFC 18-02-01 Classification/Security Levels (Amended 7/14/88)
RFC 18-03-01 Classification Process (Amended 7/14/88)
RFC 18-03-02 Classification Program Planning (Amended 7/14/88)
RFC 18-03-03 Honor's Program (Amended 7/14/88)
RFC 18-04-01 Instruction for Six Month Review (Amended 7/14/88)
RFC 18-05-01 Transfers to Other Minimum Security Institutions (Amended 7/14/88)
RFC 18-06-01 Classification Document (Amended 7/14/88)
RFC 19-01-01 Job Assignments (Amended 7/14/88)
RFC 19-02-01 Government Service Details (Added 7/14/88)
RFC 20-01-01 Academic Education Program (Amended 7/14/88)
RFC 20-01-02 Testing and Verification Procedure
RFC 20-02-01 Correctional Educator Senior
RFC 21-01-01 Library Services (Amended 7/14/88)
RFC 22-01-01 Recreation and Inmate Activities (Added 7/14/88)
RFC 22-01-02 Recreational Equipment Check-in/Check-out Procedure (Amended 7/14/88)
RFC 22-02-01 Outside Recreation (Amended 7/14/88)
RFC 22-02-02 Entry/Exit Procedure for Inmate Outside Recreation (Amended 7/14/88)
RFC 22-03-01 Inmate Clubs and Organizations (Amended 7/14/88)
RFC 22-03-02 Privilege Trips (Amended 7/14/88)

RFC 22-04-01	Conducting Inmate Organizational Meetings and Programs (Amended 7/14/88)
[RFC 22-05-01	Woodworking Shop (Deleted 6/27/88)]
RFC 22-06-01	Playing Cards (Amended 7/14/88)
RFC 23-01-01	Religious Services (Amended 7/14/88)
RFC 23-02-01	Security Procedures for the Chapel (Amended 7/14/88)
RFC 23-03-01	Visitors for Religious Programs (Amended 7/14/88)
RFC 23-04-01	Marriage of Inmates (Amended 7/14/88)
RFC 24-01-01	Social Services and Counseling Program (Amended 7/14/88)
RFC 25-01-01	Expedient and Prerelease [Release] Preparation Program Description (Amended 7/14/88)
RFC 25-02-01	Temporary Release or [/] Community Center Release (Amended 7/14/88)
RFC 25-03-01	Furloughs (Amended 7/14/88)
RFC 25-04-01	Preparole Progress Report (Amended 7/14/88)
RFC 25-04-02	Parole Eligibility Dates (Amended 7/14/88)
RFC 25-05-01	Inmate Discharge Procedure (Amended 7/14/88)
RFC 26-01-01	Citizen Involvement and Volunteer Services Program (Amended 7/14/88)

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 23, 1988 at 9 a.m., in the State Office Building Auditorium. 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 Jones
(1) Type and number of entities affected: 97 employees of the Roederer Farm Center, 252 inmates, 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 regulations 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: Monthly 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.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:120. Blackburn Correctional Complex.

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 authorizes 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 July 14 [May 13], 1988 and hereinafter should be referred to as Blackburn Correctional Complex and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

BCC 01-05-01	Duty Officer and Acting Warden
BCC 01-07-01	Extraordinary Occurrence Reports
BCC 01-09-01	Legal Assistance for Staff
BCC 01-10-01	Political Activities of Merit Employees
BCC 01-11-01	Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies
BCC 01-13-01	Relationships with Public, Media, and Other Agencies
BCC 01-15-01	Internal Affairs Office
BCC 01-16-01	Tours of Blackburn Correctional Complex
BCC 01-19-01	Inmate Access to BCC Staff [(Amended 5/13/88)]
BCC 02-01-01	Inmate Canteen
BCC 02-02-01	Fiscal Responsibility
BCC 02-02-02	Fiscal Management: Accounting Procedures
BCC 02-02-03	Fiscal Management: Checks
BCC 02-02-04	Fiscal Management: Budget
BCC 02-02-05	Fiscal Management: Insurance
BCC 02-02-06	Fiscal Management: Audits
BCC 02-04-01	Billing Method for Health Services Staff Paid by Personal Service Contract
BCC 02-05-01	Property Inventory
BCC 02-06-01	Purchasing
BCC 02-07-01	Inmate Personal Accounts (Amended 7/14/88)
BCC 03-01-01	EEO - Affirmative Action [(Amended 5/13/88)]
BCC 03-02-01	General Guidelines for BCC Employees [(Amended 5/13/88)]
BCC 03-02-03	Physical Examinations for New Employees and Emergency Notification
BCC 03-03-01	Travel Reimbursement for Official Business and Professional Meetings

BCC 03-04-01	Employment of Ex-offenders
BCC 03-06-01	Procedures for Selection, Retention, Promotion, and Lateral Transfer of Merit System Employees
BCC 03-06-02	Procedures for Promotional Opportunities
BCC 03-07-01	Workers' Compensation
BCC 03-08-01	Employee Assistance Program
BCC 03-09-01	Holding of Second Jobs by Employees
BCC 03-10-01	Student Intern (Co-op) and Practicum Placement Procedures
BCC 03-11-01	Maintenance, Confidentiality, and Challenge of Information Contained in Employee File
BCC 03-12-01	Work Assignments for Security Staff
BCC 04-02-01	Firearms Training [(Amended 5/13/88)]
BCC 04-03-01	Educational Assistance Program
BCC 05-01-01	Inmate Participation in Authorized Research
BCC 06-01-01	Storage of Expunged Records
BCC 06-02-01	Records - Release of Information [(Amended 5/13/88)]
BCC 06-02-02	Offender Records
BCC 06-03-01	Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board
BCC 08-02-01	Natural Disaster Plan (Tornado) [(Amended 5/13/88)]
BCC 08-03-01	Emergency Preparedness Plan Manual
BCC 08-04-01	Fire Safety Plan, Drills and Related Staff Duties [(Amended 5/13/88)]
BCC 08-04-02	Immediate Release of Inmates from Locked Areas
BCC 08-07-01	Facility Furnishings: Exit and Emergency Lights and Noncombustible Containers
BCC 09-01-01	Inclement Weather/Emergency Condition Operation
BCC 09-02-01	Restricted Areas
BCC 09-02-02	Inmate Pass System to Restricted Areas
BCC 09-02-03	Regulation of Inmate Movement
BCC 09-03-01	Inmate Identification
BCC 09-04-02	Complex Entry & Exit
BCC 09-05-01	Key Control
BCC 09-06-02	Transportation to Courts
BCC 09-07-01	Drug Abuse and Intoxicants Testing [(Amended 5/13/88)]
BCC 09-08-02	Use of Restraints
BCC 09-09-01	Population Counts and Count Documentation
BCC 09-10-03	Development of Institutional Post Orders
BCC 09-10-04	Governmental Services, Study Release Officer Post Orders
BCC 09-10-05	Unit A-1 Post Orders
BCC 09-10-06	Recreation Post Orders: Observation
BCC 09-10-07	Entrance Gate Post Orders
BCC 09-10-08	Visiting Area Post Orders
BCC 09-10-09	Security Staff General Orders
BCC 09-10-10	Dining Room Officer Post Orders
BCC 09-12-01	Use of Physical Force; Prohibitation of Personal Abuse and Corporal Punishment [(Amended 5/13/88)]
BCC 09-13-01	Perimeter Patrol [(Amended 5/13/88)]
BCC 09-14-01	Prohibiting Inmate Authority Over Other Inmates
BCC 09-15-01	Search Policy/Disposition of Contraband
BCC 09-16-01	Security Activity Logs
BCC 09-17-01	Institutional Supervisor Inspections
BCC 09-18-01	Use of State Vehicles and Staff Owned Vehicles
BCC 09-19-01	Duties and Responsibilities of the Institutional Captain
BCC 09-19-02	Duties and Responsibilities of the Shift Supervisor
BCC 09-20-01	Inmate Death
BCC 09-21-01	Tool Control
BCC 09-22-01	Emergency Communication System
BCC 10-01-01	Special Management Inmates
BCC 11-01-01	Menu and Special Diets
BCC 11-02-01	Food Service: Inspection, Health Protection and Sanitation
BCC 11-03-01	Food Service: Meals
BCC 11-04-01	Dining Room Guidelines
BCC 11-05-01	Food Service Security: Knife & Other Sharp Instrument/Utensil Control
BCC 11-06-01	Purchasing, Storage and Farm Products
BCC 11-07-01	Food Service Operations Manual
BCC 12-02-01	Personal Hygiene Items
BCC 12-02-02	Personal Hygiene for Inmates: Clothing, Linens and Shower Facilities
BCC 12-05-01	Barber Shop Services
BCC 12-06-01	BCC Housekeeping Plan
BCC 13-01-01	Sick Call and Pill Call
BCC 13-02-01	Administration and Authority for Health Services
BCC 13-03-01	Provisions of Health Care Delivery
BCC 13-04-01	Licensure and Training Standards
BCC 13-05-01	Medical Alert System
BCC 13-06-01	Health Care Practices
BCC 13-07-01	Emergency Medical Care Plan
BCC 13-07-02	Emergency and Specialized Health Services
BCC 13-07-03	Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent
BCC 13-08-01	Inmate Health Screening and Evaluation
BCC 13-09-01	Prohibition on Medical Experimentation
BCC 13-10-01	Dental Services
BCC 13-11-01	Suicide Prevention and Intervention Program
BCC 13-12-01	Use of Pharmaceutical products
BCC 13-12-02	Parenteral Administration of Medications and Use of Psychotropic Drugs
BCC 13-13-01	Inmate Health Education
BCC 13-14-01	Management of Serious and Infectious Diseases
BCC 13-15-01	Informed Consent
BCC 13-16-01	Health Records
BCC 13-17-01	Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery
BCC 13-19-01	Physicians Referrals/Continuity of Care
BCC 13-20-01	Chronic and Convalescent Care
BCC 13-22-01	Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers
BCC 13-23-01	First Aid Kits
BCC 14-01-01	Office of Public Advocacy Attorney Visits
BCC 14-02-01	Law Library
BCC 14-03-01	Inmate Grievance Procedure

BCC 14-04-01	Inmate Rights and Responsibilities
BCC 14-05-01	Inmate Claims
BCC 15-01-01	Authorized Inmate Personal Property
BCC 15-02-01	Meritorious Living Unit (B-1)
BCC 15-03-01	Rules and Regulations for Dormitories
BCC 15-04-01	Restoration of Forfeited Good Time
BCC 15-05-01	Extra Duty Assignments [(Amended 5/13/88)]
BCC 15-06-01	Due Process/Disciplinary Procedures
BCC 16-01-01	Inmate Furloughs
BCC 16-02-01	Visiting
BCC 16-03-01	Inmate Packages
BCC 16-03-02	Outgoing Inmate Packages
BCC 16-03-03	Inmate Correspondence [(Amended 5/13/88)]
BCC 18-01-01	Classification: Institutional Classification and Reclassification
BCC 18-02-01	Racial Balance in Living Areas
BCC 19-01-01	Inmate Work Programs [(Amended 5/13/88)]
BCC 19-02-01	Classification of Inmates to Governmental Service Program
BCC 19-03-01	Correctional Industries
BCC 20-01-01	Academic and Vocational School
BCC 20-02-01	College Programs
BCC 20-04-01	Educational Program Evaluation
BCC 20-05-01	Educational Program Planning
BCC 20-06-01	Academic and Vocational Curriculum
BCC 21-01-01	Library Services
BCC 22-01-01	Arts and Crafts/Production and Sale of Items
BCC 22-02-01	Privileged Trips
BCC 22-03-01	Recreational Employees
BCC 22-04-01	Recreation and Inmate Activities
BCC 22-04-02	Inmate Clubs and Organizations
BCC 22-04-03	Conducting Inmate Organizational Meetings and Programs
BCC 22-04-04	Recreation Program Availability
BCC 22-04-05	Supervision of Leisure-Time Craft Club Activities and Materials
BCC 22-06-01	Music Club
BCC 22-09-01	Use of Inmates in Recreation Programs
BCC 23-01-01	Religious Services
BCC 24-01-01	Duties and Responsibilities of Classification and Treatment Officers
BCC 24-02-01	Duties and Responsibilities of the Unit Director and Assistant to Unit Director
BCC 24-03-01	Social Services
BCC 25-01-01	Inmate Check Out Procedure
BCC 25-02-02	Temporary Release/Community Center Release [(Amended 5/13/88)]
BCC 26-01-01	Citizen Involvement and Volunteer Service Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 23, 1988 at 9 a.m., in the State Office Building Auditorium. 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 Jones

(1) Type and number of entities affected: 85 employees of the Blackburn Correctional Complex, 361 inmates, 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 regulations 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: Monthly 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.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:130. Western Kentucky Farm Center.

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 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. This regulation is 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 July 14 [June 10], 1988 and hereinafter should be referred to as Western Kentucky Farm Center 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.

WKFC 01-09-01	Duty Officers, External and Internal Inspections, and Staff Tours (Amended 7/14/88)
WKFC 02-01-01	Inmate Funds [(Added 6/10/88)]
WKFC 02-00-03	Invoice/Voucher Processing
WKFC 02-00-06	Purchasing Procedures
WKFC 02-01-01	Inmate Funds

WKFC 02-02-01	Agency Funds and Accounting Procedures
WKFC 02-08-01	Property Receipt and Inventory Procedures
WKFC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKFC 04-02-01	Employee Training and Development
WKFC 04-04-01	Educational Assistance Program
WKFC 05-01-01	Research, Consultants, and Student Interns
WKFC 06-00-01	Offender Records and Information Access
WKFC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKFC 09-00-01	Drug Abuse Testing
WKFC 10-02-01	Special Management Inmate(s)
WKFC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKFC 11-00-03	Food Service Inspections, Sanitation, Purchasing, Storage, and Corrections Cabinet Farm Products
WKFC 11-02-01	Food Service General Guidelines
WKFC 11-02-02	Food Service Security
WKFC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets [(Amended 6/10/88)]
WKFC 12-01-01	Inmate Clothing
WKFC 13-00-01	Special Health Programs [(Amended 6/10/88)]
WKFC 13-01-01	Use of Pharmaceutical Products [(Amended 6/10/88)]
WKFC 13-02-01	Health Care Services [(Amended 6/10/88)]
WKFC 14-00-01	Inmate Rights and Responsibilities
WKFC 14-04-01	Legal Services Program
WKFC 14-06-01	Inmate Grievance Procedure
WKFC 15-01-01	Hair and Grooming Standards
WKFC 15-03-01	Meritorious Good Time
WKFC 15-05-01	Restoration of Forfeited Good Time
WKFC 16-01-01	Visiting Policy and Procedures
WKFC 16-02-01	Inmate Correspondence
WKFC 16-03-01	Inmate Access to Telephones
WKFC 16-04-01	Inmate Packages [(Amended 6/10/88)]
WKFC 17-01-01	Inmate Personal Property [(Amended 6/10/88)]
WKFC 17-02-01	Inmate Reception and Orientation
WKFC 18-01-01	Structure, Guidelines, and Functions of the Classification Committee
WKFC 18-13-01	Meritorious Housing
WKFC 19-03-01	Inmate Wage Program
WKFC 19-04-01	Work/Program Assignments
WKFC 20-04-01	Academic Education Program(s)
WKFC 20-03-01	Vocational Education Program(s)
WKFC 22-00-01	Inmate Recreation and Leisure Time Activities
WKFC 22-00-02	Inmate Clubs & Organizations
WKFC 23-00-01	Religious Services [(Amended 6/10/88)]
WKFC 25-01-01	Gratuities
WKFC 25-02-01	Inmate Release Process
WKFC 25-03-01	Prerelease Programs
WKFC 26-01-01	Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 23, 1988 at 9 a.m., in the State Office Building Auditorium. 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 Jones
(1) Type and number of entities affected: 83 employees of the Western Kentucky Farm Center, 320 inmates, 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 regulations 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: Monthly 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.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:140. Bell County Forestry Camp.

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 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. This regulation is 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 July 14 [June 10], 1988 and hereinafter should be referred to as Bell County Forestry Camp 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.

BCFC 01-02-01 Organization and Assignment of Responsibility
BCFC 01-04-02 Extraordinary Occurrence Procedure
BCFC 01-05-01 Procedures Office: Duties and Responsibilities
BCFC 01-08-01 Public Information and Inmate Access to News Media
BCFC 01-09-01 Staff Participation in Professional Organization and Conferences; Provision for Leave and Reimbursement for Expenses
BCFC 01-11-01 Institutional Duty Officer's Responsibilities
BCFC 02-01-02 Fiscal Management: Accounting Procedures
BCFC 02-01-03 Fiscal Management: Agency Funds
BCFC 02-01-04 Fiscal Management: Insurance
BCFC 02-01-05 Fiscal Management: Budget
BCFC 02-01-06 Fiscal Management: Audit
BCFC 02-02-01 Inmate Accounts
BCFC 02-02-02 Inmate Control of Personal Funds
BCFC 02-02-03 Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
BCFC 02-03-01 Purchase Orders
BCFC 02-04-01 Processing of Invoices
BCFC 02-05-01 BCFC Materials Receiving Procedure
BCFC 02-06-01 Property Inventory
BCFC 04-01-01 Employee Training and Development
BCFC 05-01-01 Information System
BCFC 06-01-01 Offender Records
BCFC 06-02-01 Storage of Expunged Records
BCFC 06-03-01 Court Trips
BCFC 06-03-02 Receipt of Order of Appearance
BCFC 08-02-01 Fire Prevention
BCFC 08-03-01 Fire Procedures
BCFC 08-03-02 Fire Extinguishers and Their Use
BCFC 08-09-01 Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances
BCFC 08-09-02 OHSA Hazard Communication Program (Added 7/14/88)
BCFC 09-06-01 Search Policy/Disposition of Contraband
BCFC 09-14-01 Bell County Forestry Camp - Restricted Area
BCFC 10-01-01 Special Management Inmates
BCFC 11-01-01 Food Services: General Guidelines
BCFC 11-02-01 Food Service: Security
BCFC 11-03-01 Dining Room Guidelines
BCFC 11-04-01 Food Service: Meals
BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets
BCFC 11-05-02 Health Requirements of Food Handlers
BCFC 11-06-01 Food Service: Inspection and Sanitation
BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products
BCFC 11-08-01 Staff/Visitor Meals
BCFC 12-01-01 Sanitation, Living Conditions Standards, and Clothing Issues
BCFC 12-01-02 Bed Areas, Assignments/Conditions Standards [(Amended 6/10/88)]
BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry
BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule
BCFC 12-03-02 Barbership Services and Equipment Control
BCFC 12-04-01 Institutional Inspections
BCFC 12-05-01 Fire Safety and Use of Noncombustible Receptacles
BCFC 12-06-01 Pest Control
BCFC 13-01-01 Organization of Health Services
BCFC 13-02-01 Health Maintenance Services: Sick Call and Pill Call
BCFC 13-03-01 Dental Policy/Sick Call
BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations
BCFC 13-05-01 Licensure and Training Standards
BCFC 13-06-01 Suicide Prevention and Intervention Program
BCFC 13-06-02 First Aid/CPR Training Program
BCFC 13-06-03 Emergency Medical/Dental Care Services
BCFC 13-07-01 Health Records
BCFC 13-08-01 Special Diets
BCFC 13-09-01 Notification of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death
BCFC 13-10-01 Health Education/Special Health Programs
BCFC 13-11-01 Informed Consent
BCFC 13-12-01 Mental Health/Provision of Psychiatric Services by KCPC
BCFC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC)
BCFC 13-13-01 Identification of Special Needs Inmates
BCFC 13-14-01 Use of Pharmaceutical Products
BCFC 13-15-01 Medical Restraints
BCFC 13-16-01 Specialized Health Services
BCFC 13-17-01 Vision Care/Optometry Services
BCFC 14-01-01 Inmate Rights and Responsibilities
BCFC 14-02-01 Legal Services Program
BCFC 14-03-01 Inmate Grievance Procedure
BCFC 14-04-01 Inmate Participation in Authorized Research
BCFC 15-01-01 Due Process/Disciplinary Procedures
BCFC 16-01-01 Inmate Visiting
BCFC 16-02-01 Telephone Communications
BCFC 16-03-01 Mail Regulations
BCFC 16-03-02 Inmate Packages
BCFC 17-01-01 Assessment/Orientation Procedure
BCFC 17-02-01 Inmate Reception Process
BCFC 17-03-01 Inmate Personal Property and Property Control
BCFC 17-04-01 Unauthorized Items
BCFC 17-05-01 Inmate Canteen
BCFC 18-01-01 Institutional Classification Committee
BCFC 18-02-01 Classification Document
BCFC 18-03-01 Classification Process
BCFC 18-03-02 Classification Program Planning
BCFC 18-03-03 Population Category Status
BCFC 18-04-01 Instructions for Six Month Review
BCFC 18-05-01 Transfers to Other Minimum Security Institutions
BCFC 19-01-01 Job and Vocational Program Assignments
BCFC 19-02-01 Government Service Details
BCFC 20-01-01 Academic/Vocational School
BCFC 20-01-02 Testing and Verification Procedure
BCFC 20-02-01 Educational Program Planning
BCFC 20-03-01 Academic and Vocational Curriculum
BCFC 20-04-01 Educational Personnel Practices
BCFC 21-01-01 Library Services
BCFC 22-01-01 Recreation and Inmate Activities
BCFC 22-02-01 Inmate Clubs and Organizations
BCFC 22-02-02 Conducting Inmate Organizational Meetings and Programs
BCFC 22-03-01 Privilege Trips
BCFC 23-01-01 Religious Service
BCFC 23-02-01 Visitors for Religious Programs
BCFC 23-03-01 Marriage of Inmates

BCFC 24-01-01	Social Services and Counseling Program
BCFC 24-01-02	Casework Services
BCFC 25-01-01	Release Preparation Program Description
BCFC 25-02-01	Temporary Release/Community Center Release
BCFC 25-02-02	Furloughs
BCFC 25-03-01	Preparole Progress Report
BCFC 25-03-02	Parole Eligibility Dates
BCFC 25-04-01	Inmate Discharge Procedure
BCFC 26-01-01	Citizen Involvement and Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 23, 1988 at 9 a.m., in the State Office Building Auditorium. 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 Jones
(1) Type and number of entities affected: 36 employees of the Bell County Forestry Camp and 200 inmates, 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 regulations 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: Monthly 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.

TRANSPORTATION CABINET
Department of Highways
Division of Toll Facilities
(Proposed Amendment)

600 KAR 2:020. Emergency vehicles and vehicles in processions on the toll roads.

RELATES TO: KRS 175.450, 175.470, 175.520
PURSUANT TO: KRS 174.080, 175.470, 175.520
NECESSITY AND FUNCTION: The Department of Highways is authorized to charge and collect toll for transit over each turnpike project. KRS 175.520 specifically exempts emergency vehicles from the payment of tolls under certain circumstances. [The department has determined that emergency vehicles operating on the turnpikes toll roads should be exempt from paying tolls during the time of an emergency.] Further, the department has determined that Transportation Cabinet and Kentucky National Guard vehicles should not pay the toll and are exempted by the provisions of this regulation. The administrative regulation also sets forth the manner in which emergency vehicles and vehicles in processions may be processed through a toll collection station.

Section 1. Ambulance Transportation Services. (1) The Transportation Cabinet shall establish a nonpaying toll road identification card account for each ambulance transportation service licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board in accordance with 902 KAR 20:115 which applies for an account. Application shall be on forms prescribed and furnished by the Transportation Cabinet.
(2) During emergency trips on a toll road when the emergency lights of an ambulance are flashing, the toll collector shall pass the ambulance through the least congested lane of a toll collection station without attempting to stop or process the vehicle.
(3) Each ambulance owned by a licensed ambulance transportation service may be issued a nonpaying identification card for use on the toll road during trips not involving an emergency. The identification card may be presented in lieu of a toll payment by the driver of the ambulance at a toll collection station. The identification card shall not be used except for official business.

Section 2. State Police Vehicles. (1) The Transportation Cabinet shall establish a nonpaying toll road identification card account for the Kentucky State Police.
(2) During emergency trips on the toll roads when the emergency lights of a Kentucky State Police vehicle are flashing, the toll collector shall pass the state police vehicle through the least congested lane of traffic without attempting to stop or process the vehicle.
(3) The Kentucky State Police shall be issued nonpaying identification cards for use by their employees on the toll roads during trips not involving an emergency. The identification card may be presented in lieu of toll payment at a toll collection station. The identification card shall not be used except for official business.

Section 3. Local [Emergency] Fire Department Vehicles, Local Police Vehicles, and Other Emergency Vehicles. (1)(a) The Transportation Cabinet shall establish a nonpaying toll road

identification card account for each local police and fire department which has jurisdiction in a county served by a toll road and which applies for an account. Application shall be on forms prescribed and furnished by the Transportation Cabinet.

(b) A nonpaying toll road identification card issued to a local police or fire department shall only be valid within its jurisdiction or in a county continguous to the county of jurisdiction.

(c) The identification card shall not be used except for official business.

(2)(a) [(1)(a)] During emergency trips of fire department, local police or other emergency vehicles on a toll road when the emergency lights of the vehicle are flashing, the toll collector shall pass the emergency vehicle through the least congested lane of traffic without attempting to stop or process the vehicle.

(b) When the fire department, local police, or other agency has been summoned [called out] by the Division of Toll Facilities under emergency conditions, the return passage, although it may not be under emergency conditions, shall also be toll free.

(3) [(2)] During trips on the toll roads not involving an emergency, the operator of the vehicles set forth in this section shall [must] stop at each toll collection station and shall pay the toll as required by 600 KAR 2:010, Toll assessment on turnpikes or if on official business may present a valid nonpaying toll road identification card.

Section 4. Funeral Processions, United States Military Convoys, and Other Processions. Each vehicle in a funeral, United States military, or other type convoy or procession is required to pay the toll at each toll collection station. Arrangements may be made to allow all vehicles in the convoy to pass through the toll collection station using one (1) or more credit cards by contacting the Transportation Cabinet, Division of Toll Facilities, State Office Building, Frankfort, Kentucky 40622, in advance of the convoy date(s). The convoy or procession may request a special procession credit card from the Division of Toll Facilities.

Section 5. The Transportation Cabinet shall establish a nonpaying toll road identification card account for the Kentucky Transportation Cabinet. A Transportation Cabinet employee while in the discharge of his official duties on the toll roads may be issued a nonpaying identification card to be used on the toll road during trips not involving an emergency. The identification card may be presented in lieu of toll payment at a toll collection station. The identification card shall not be used except for official business.

Section 6. The Transportation Cabinet shall establish a nonpaying toll road identification card account(s) for the Kentucky National Guard. The Kentucky National Guard may be issued nonpaying identification cards for use by their employees on the toll roads during trips not involving an emergency. The identification card may be presented in lieu of toll payment at a toll collection station. The identification card shall not be used except for official business.

B. D. HENSON, Commissioner
MILO D. BRYANT, Secretary

APPROVED BY AGENCY: June 27, 1988
FILED WITH LRC: July 1, 1988 at 2 p.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 26, 1988, at 10 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 21, 1988 so notify: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, Tenth Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: The amendment to the regulation affects local police and fire departments in all 120 counties as well as all ambulance transportation services licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(a) Direct and indirect costs or savings to those affected: Tolls which will no longer have to be paid.

1. First year: $10,000 savings.
2. Continuing costs or savings: $10,000 savings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Each local department which is eligible to operate toll free on Kentucky's toll roads will have to apply for a toll free credit card on forms furnished by the Transportation Cabinet.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: Loss of toll road revenue and administrative cost of establishing toll free credit cards and their related accounts.

1. First year: $12,000.
2. Continuing costs or savings: $12,000.
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Each application for a toll free credit card will have to be reviewed and a report issued for each account.

(3) Assessment of anticipated effect on state and local revenues: Loss of $10,000 to the road fund each year.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet considered allowing any police or fire vehicle to proceed through a toll gate without a credit card. This alternative method was rejected because it would not allow the cabinet to easily monitor when the vehicle was being operated within its county of jurisdiction or in a county adjacent to its county of jurisdiction, and it would eliminate some of the oversight the Transportation Cabinet has of toll collectors. When the toll collectors process a vehicle through using a toll free credit card there is no question but that the toll collector acted in an appropriate manner. If the vehicle were allowed to just pass through it could appear that the toll collector was arbitrarily allowing vehicles to pass through without paying the toll.

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

conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The amendment to this regulation implements House Bill 455 passed by the 1988 General Assembly.
TIERING: Was tiering applied? Yes

TRANSPORTATION CABINET
Office of Minority Affairs
(Proposed Amendment)

600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises.

RELATES TO: KRS Chapters 96A, 174, 176, 177, 183, 13 CFR 121.1-121.3, 49 CFR 23
PURSUANT TO: KRS 13A.120, 174.080, 49 CFR 23
NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program to support the fullest possible participation of firms or business enterprises owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program of certification of disadvantaged, minority and women business enterprises. This administrative regulation establishes the procedures and criteria for the Transportation Cabinet's certification program.

Section 1. Definitions. (1) "Applicant" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification as a disadvantaged, minority or women business enterprise.
(2) "Approval" means that the applicant meets disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.
(3) "Certification" means the process whereby the Transportation Cabinet determines if an applicant meets disadvantaged, minority or women business enterprise or joint venture criteria.
(4) "Challenge" means an action of a third party which takes issue with the socially and economically disadvantaged status of certified disadvantaged business enterprise program participants or applicants for DBE certification.
(5) "Decertified" means that a firm or business enterprise which has been certified by the Transportation Cabinet which certification has not expired, as a disadvantaged, minority or women business enterprise or joint venture has been determined to be ineligible and is, therefore, no longer entitled to the rights and privileges accorded to those who are certified by the Transportation Cabinet as a disadvantaged, minority or women business enterprise or joint venture.
(6) "Denial" means that the applicant does not meet disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.
(7) "Disadvantaged business enterprise" or "DBE" means a small business concern as defined pursuant to Section 3 of the Small Business Act and implementing regulations:
(a) Which is at least fifty-one (51) percent owned by one (1) or more socially and economically disadvantaged persons; or, in the case of any publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more socially and economically disadvantaged individuals; and
(b) Whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.
(8) "Joint venture" means an association of two (2) or more businesses to perform a specified business contract for profit for which purpose the businesses combined their property, capital, efforts, skills and knowledge.
(9) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:
(a) Black (a person having origins in any of the black racial groups of Africa);
(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);
(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);
(e) American Indian and Alaskan native (a person having origins in any of the original peoples of North America); or
(f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).
(10) "Minority business enterprise" or "MBE" means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one (1) or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:
(a) Which is at least fifty-one (51) percent owned by one (1) or more minorities or women or, in the case of a publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more minorities or women; and
(b) Whose management and daily business operations are controlled by one (1) or more such individuals.
(11) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the application form.
(12) "Onsite inspection" means conducting an interview with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities.
(13) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black

Americans, Hispanic Americans, native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. The Transportation Cabinet rebuttable presumption that individuals listed in the groups below are socially and economically disadvantaged. The Transportation Cabinet also may determine, on a case-by-case basis, that individuals who are not a member of one (1) of the following groups are socially and economically disadvantaged:

(a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

(b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians;

(d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

(f) "Women."

(14) "Women business enterprise" or "WBE" means a disadvantaged or minority business enterprise which is owned and controlled by one (1) or more women.

Section 2. 49 CFR 23 effective May 23, 1988 is adopted without change. This regulation governs the federal Department of Transportation's and the Kentucky Transportation Cabinet's relationship with and responsibility to each other in the DBE/MBE/WBE Program. It further sets forth the basic requirements which the Transportation Cabinet shall impose on firms desiring certification.

Section 3. [2.] Application Process. (1) Application for certification as a DBE, MBE, or WBE shall be made on forms prescribed and furnished by the Transportation Cabinet. Each application form shall be completed in full. All documentation required by the application shall be attached to the completed application. The person signing the application shall identify his position with the business enterprise applying for certification. The completed application shall be submitted to the Transportation Cabinet, Office of Minority Affairs.

(2) If the application is not complete, the Office of Minority Affairs shall return the application to the applicant firm requesting that the omitted information be included. An incomplete application shall not be considered by the Office of Minority Affairs.

(3) The Office of Minority Affairs shall perform an onsite inspection of the offices and any job sites in Kentucky on which the firm is working at the time of the application evaluation of any new applicant. Failure of the applicant firm to participate in the onsite inspection shall be sufficient cause for the Office of Minority Affairs to deny the application.

(4) An out-of-state applicant as a prerequisite to consideration of certification by the Office of Minority Affairs shall be certified as a DBE, MBE or WBE by the state transportation agency responsible for certifying firms under 49 CFR Part 23 in the state in which the firm has residence.

(5) The Office of Minority Affairs may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Office of Minority Affairs to deny the application.

Section 4. [3.] Evaluation of Application. (1) The Transportation Cabinet, Office of Minority Affairs shall use the eligibility standards set forth in 49 CFR Part 23.53 to determine the eligibility of a firm to be certified or recertified as a MBE. The Office of Minority Affairs shall use the eligibility standards set forth in 49 CFR Part 23.53; 49 CFR Part 23.62; 49 CFR Part 23, Subpart D, Appendix A, Appendix B and Appendix C to determine the eligibility of a firm to be certified or recertified as a DBE or WBE. To be certified a firm shall perform a commercially useful function as set forth in 49 CFR Part 23.47.

(2) The Office of Minority Affairs shall issue a determination of eligibility for certification within ninety (90) days of receipt of a completed application provided that a challenge as set forth in Section 9 [8] of this administrative regulation has not been received.

Section 5. [4.] Certification of Applicant Firm. (1) If an application for certification as a DBE, MBE or WBE is approved by the Transportation Cabinet, Office of Minority Affairs and a challenge to the status of a firm from a third party as set forth in Section 9 [8] of this administrative regulation is not received during the time the Office of Minority Affairs is evaluating the application, the notification required by Section 4(2) of this administrative regulation shall be the notice to the applicant firm of certification as a DBE, MBE or WBE.

(2) Certification as a DBE, MBE or WBE is valid for one (1) year from the date of notice of certification.

(3) Records of a certified firm shall be retained for a period of not less than five (5) years from the date of notice of certification.

(4) Certification of a business enterprise shall expire immediately upon any change in ownership or control of the business enterprise. The business enterprise may submit a new application to the Office of Minority Affairs to be considered for certification under the new ownership or control. If, within seven (7) days of the change in ownership or control, the firm notifies the Office of Minority Affairs of the change, the office may extend the expired certification for a brief period of time and with reasonable conditions placed on the firm.

Section 6. [5.] Recertification. (1) At least thirty (30) days prior to its certification expiration a certified DBE, MBE or WBE that intends to continue its certification shall submit an application to the Transportation Cabinet, Office of Minority Affairs. The application shall be in the same form and

require the same information as in Section 3 [2] of this administrative regulation.

(2) Certification of a DBE, MBE or WBE which has requested recertification at least thirty (30) days prior to the date of certification expiration shall not expire unless the Office of Minority Affairs denies the request for recertification as set forth in Section 6 [5] of this administrative regulation.

(3) If a firm is notified that its request for recertification is denied and the reasons therefore, the firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, its request for recertification shall be denied.

(4) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 [9] of this administrative regulation.

(5) If the Office of Minority Affairs' decision after the predetermination meeting is that the request for recertification shall be denied, the denial shall be effective immediately. However, the firm may appeal that decision in accordance with Section 11 [10] of this administrative regulation.

Section 7. [6.] Denial of Certification. (1) If an application for certification as a DBE, MBE, or WBE is denied by the Transportation Cabinet, Office of Minority Affairs, the notification required by Section 4(2) of this administrative regulation shall set forth the reasons for denial.

(2) A denial may be appealed to the Transportation Cabinet within thirty (30) days of the notice. The appeal shall be filed in accordance with Section 11 [10] of this administrative regulation.

(3) An applicant firm may not reapply for certification for one (1) year from the effective date of denial. The effective date of denial shall be the date of the notice if the denial is not appealed. If the denial is appealed and the denial is upheld the effective date of the denial shall be the date of the notice of final action on behalf of the Transportation Cabinet.

Section 8. [7.] Decertification. (1) The Transportation Cabinet, Office of Minority Affairs may perform periodic reviews of each certified DBE, MBE or WBE during its certification period to verify continued eligibility of the firm. If the Office of Minority Affairs finds noncompliance with the eligibility criteria or the certified firm fails to provide reasonable information requested by the Office of Minority Affairs as a part of the periodic review, the office may initiate a decertification proceeding.

(2) The Office of Minority Affairs shall notify the certified firm of the pending decertification. The notice shall specify the reasons for the pending decertification. The firm may request a predetermination meeting within ten (10) days of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, it shall be decertified.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 [9] of this administrative regulation.

(4) If the Office of Minority Affairs' decision after the predetermination meeting is that the firm shall be decertified, the firm may appeal that decision in accordance with Section 11 [10] of this administrative regulation.

(5) The effective date of the decertification is thirty (30) days after the date the notice of decertification is mailed to the firm providing the firm does not appeal the decertification to the Transportation Cabinet. If a firm appeals the decertification, the effective date of the decertification shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 [10] of this administrative regulation. Decertification shall be for a specific period of time but not less than one (1) year.

Section 9. [8.] Challenge of DBE Certification. (1) Any third party may challenge the socially and economically disadvantaged status of any individual, except an individual who has a current 8(a) certification from the Small Business Administration, rebuttably presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Transportation Cabinet, Office of Minority Affairs as a DBE. The challenge shall be made in writing to the Office of Minority Affairs.

(2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

(3) The Office of Minority Affairs shall determine, on the basis of the information provided by the challenging party, if there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

(4) If the Office of Minority Affairs determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the office shall so inform the challenging party in writing. This terminates the proceeding.

(5) If the Office of Minority Affairs determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the office shall notify the challenged party that his status as a socially and economically and disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the Office of Minority Affairs, within a specified reasonable time, information sufficient to evaluate his status as a socially and economically disadvantaged individual. Failure to provide the requested information within the time limit shall be cause for the DBE to be decertified or to be denied certification.

(6) If the social and economic disadvantaged status of a new applicant is challenged, the challenge proceedings shall be completed prior to completion of the certification.

(7) The Office of Minority Affairs shall evaluate the information available and make a proposed determination of the social and economic disadvantage of the challenged party. The office shall notify both parties of this

proposed determination, setting forth the reasons for its proposal.

(8) Either party may request a predetermination meeting within ten (10) days of the date of the notice. If neither party requests a predetermination meeting within the ten (10) days, the proposed determination of the Office of Minority Affairs shall become the final determination, i.e., the challenged party shall either be decertified or continue to be certified.

(9) The predetermination meeting, if requested, shall be held in accordance with Section 10 [9] of this administrative regulation. However, both parties shall be allowed to attend the meeting or respond in writing to the proposed determination.

(10) In making the determinations called for in subsections (3) and (7) of this section and Section 10 [9] of this administrative regulation as it relates to challenge, the Office of Minority Affairs shall use the standards set forth in 49 CFR Part 23, Subpart D, Appendix C.

(11) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(12) The decision of the Office of Minority Affairs in subsection (4) of this section or after an appeal and hearing before the Secretary of the Transportation Cabinet as set forth in Section 11 [10] of this administrative regulation may be appealed to the United States Department of Transportation, by the adversely affected party to the proceeding under the procedures of 49 CFR Part 23.55.

Section 10. [9.] Predetermination Meeting. (1) A predetermination meeting with the Office of Minority Affairs may be requested by any party as set forth in Sections 8 and 9 [7 and 8] of this administrative regulation. The request shall be made in writing, signed and dated.

(2) The Transportation Cabinet, Office of Minority Affairs shall schedule the predetermination meeting between five (5) and ten (10) days after receipt of the request for the predetermination meeting. Upon agreement between the Office of Minority Affairs and all affected parties the meeting may be scheduled later than the ten (10) days.

(3) The Office of Minority Affairs shall notify all affected parties in writing of the date, time and location of the predetermination meeting.

(4) The predetermination meeting shall be an informal proceeding. The predetermination meeting shall provide the opportunity for the affected parties to present evidence or arguments, either written or oral, on the matter being considered by the Office of Minority Affairs. The affected parties may be represented by legal counsel.

(5) The Office of Minority Affairs shall render a decision within seven (7) days of completion of the predetermination meeting. In making this decision, the Office of Minority Affairs shall use the standards set forth in Section 4 [3] of this administrative regulation. The affected parties shall be notified of the decision of the Office of Minority Affairs.

Section 11. [10.] Appeal and Hearing. (1) Any party in Sections 6[5](2), 8[7](4) and 9[8](10) of this regulation adversely affected by a decision of the Transportation Cabinet, Office of Minority Affairs may appeal that decision within thirty (30) days of the notice of determination. The appeal shall be filed in writing with the Transportation Cabinet.

(2) The Transportation Cabinet shall schedule the hearing on the appeal between fifteen (15) and thirty (30) days after the appeal is received unless otherwise agreed to by all parties.

(3) The Transportation Cabinet shall provide written notice to the appellant of the date, time and location of the hearing.

(4) At the hearing, the hearing officer appointed by the Transportation Cabinet, shall provide an opportunity for the appellant to call witnesses and present evidence and arguments both written and oral as to why the decision of the Office of Minority Affairs should be overturned.

(5) The Office of Minority Affairs shall present evidence at the hearing on the reasons their decision was made. However, the burden of proof is on the appellant.

(6) The hearing officer appointed by the Transportation Cabinet has the authority to issue subpoenas to compel the appearance of witness or the production of other evidence.

(7) The Transportation Cabinet shall provide a stenographer to record all oral testimony at the hearing.

(8) The hearing officer shall prepare a written report setting forth findings of fact, conclusions of law and a recommendation of final action within sixty (60) days of the hearing. The report shall be submitted to the Secretary of the Transportation Cabinet or his appointed designee.

(9) The Secretary shall render the final decision of the Transportation Cabinet within ten (10) days of receipt of the hearing officer's report. A copy of the decision shall be sent by certified mail to the appellant and the Office of Minority Affairs.

(10) An appeal from the Transportation Cabinet's final decision may be made to the United States Department of Transportation in accordance with the provisions of 49 CFR 23.55 and 49 CFR 23 Subpart D, Appendix A, Decertification Procedures.

Section 12. [11.] Joint Ventures. (1) Any joint venture which includes a certified DBE, MBE or WBE may apply to be certified as a joint venture eligible to participate in the DBE, MBE or WBE program. Application for certification shall be on forms prescribed and furnished by the Transportation Cabinet. The application procedure, eligibility standards, and certification procedure followed shall be as set forth in this administrative regulation.

(2) Application from a joint venture which includes a disadvantaged, minority or women business enterprise which has not been certified shall not be considered by the Transportation Cabinet.

(3) If all firms involved in the joint venture are certified DBEs, MBEs or WBEs, there is no need for the joint venture to request certification.

Section 13. [12.] Additional Program Guidelines. [(1) All portions of 49 CFR 23, last amended October 21, 1987, are hereby incorporated by reference. The federal

regulation sets forth the United States Department of Transportation policy of supporting the fullest possible participation of firms owned and controlled by minorities, women and individuals who are socially and economically disadvantaged. It further sets forth the responsibilities of and requirements for recipients of funds from USDOT.]

[(2)] 13 CFR 121.1-121.3, effective [last amended] March 2, 1987, is adopted without change [hereby incorporated by reference]. The federal regulation sets forth the small business size standards established by the Small Business Administration. These size standards, when less than $14 million, are required by 49 CFR Part 23 Subpart D, Appendix A to be used to determine when a firm has graduated from the certification program, i.e., it is no longer considered to be a small business.

[(3) A copy of the material incorporated by reference may be viewed at the Transportation Cabinet, Office of Minority Affairs.]

MILO D. BRYANT, Secretary
WILLIAM E. COFIELD, SR., Executive Director
APPROVED BY AGENCY: July 6, 1988
FILED WITH LRC: July 15, 1988 at 9 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 26, 1988 at 10:30 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 21, 1988 so notify: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All firms applying to be certified or recertified as a DBE, MBE or WBE. Currently there are 35 so certified.

(a) Direct and indirect costs or savings to those affected: The change in the federal regulation, adopted by the Transportation Cabinet changes the way of computing goals of nonhighway projects. Since there are virtually no nonhighway projects overseen by the Transportation Cabinet, there should be no change in the costs or savings.

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 as a result of this amendment.

(2) Effects on the promulgating administrative body: None required as a result of this amendment.

(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 required as a result of this amendment.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Since the change in the federal regulation has no effect on the cabinet's program, we considered not adopting it. However, in order to be able to refer applicants to the latest version of the federal regulations, it was decided to adopt the amendment.

(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 applicants for certification must be treated the same way to eliminate any question of favoritism.

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

601 KAR 1:025. Transporting hazardous materials; permit.

RELATES TO: KRS 174.400 through 174.435, 49 CFR [174.990]

PURSUANT TO: KRS 174.410(2), 174.430(1), 49 CFR

NECESSITY AND FUNCTION: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources, shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.435. KRS 174.430(1) provides that the Secretary of the Transportation Cabinet is authorized to fix a reasonable fee, by regulation, to be paid by applicants for a general permit to transport radioactive materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of such permit. This regulation implements these [the] statutory provisions [set out above].

Section 1. [(1)] The Hazardous materials transportation regulations adopted and issued by the United States Department of Transportation relating to the following subjects shall govern the transportation of hazardous materials within Kentucky [are hereby incorporated by reference]:

(1) [(a)] Title 49, Code of Federal Regulations, Part 171, as amended through February 1, 1988. Part 171 which sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(2) [(b)] Title 49, Code of Federal Regulations, Part 172, as amended effective January 2, 1989 and authorized June 13, 1988 [through February 1, 1988]. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for shipping papers, package marking, labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;

[(c) Title 49, Code of Federal Regulations, Part 173, as amended through February 1, 1988. Part 173 sets forth the general requirements which shippers shall meet for shipments and packaging. For the purposes of this administrative regulation it is only applicable to shipment by air or highway;]

(3) [(d)] Title 49, Code of Federal Regulations, Part 175, as amended through April 20, 1987. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;

(4) [(e)] Title 49, Code of Federal Regulations, Part 177, as amended effective January 2, 1989 and authorized June 13, 1988 [through May 18, 1987]. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways; and

(5) [(f)] Title 49, Code of Federal Regulations, Part 178, as amended through May 18, 1987. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials.

[(2) The applicable parts of 49 CFR, as amended, are on file for public inspection in the offices of the Legislative Research Commission, New Capitol Building, Frankfort, Kentucky 40601, and in the Transportation Cabinet's Division of Motor Vehicle Enforcement, State Office Building, Frankfort, Kentucky 40622.]

Section 2. (1) Title 49, Code of Federal Regulations, Part 173 as amended effective January 2, 1989 and authorized June 13, 1988, is incorporated by refrence but only as it is applicable to the shipment of hazardous materials by air or highway. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging.

(2) This material incorporated by reference is available for public inspection and copying in the Transportation Cabinet, Office of the Secretary, 10th Floor, State Office Building, Frankfort, Kentucky 40622. Office hours are from 8 a.m. to 4:30 p.m., local prevailing time on Monday through Friday.

Section 3. [2.] Applicants for an annual to transport radioactive materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of such permit, shall pay to the Transportation Cabinet a fee of twenty-five (25) dollars. The applicant for a general permit shall submit his application to the Department of Vehicle Regulation on forms prescribed and furnished by the department.

MARJORIE C. KLEE, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: June 27, 1988
FILED WITH LRC: July 1, 1988 at 2 p.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 26, 1988, at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 21, 1988 so notify: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, Tenth Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: 600 motor carriers are annually issued permits to transport hazardous materials in or through Kentucky.
(a) Direct and indirect costs or savings to those affected: Cost of special packaging and placards for molten sulfur. Required on all interstate moves. There are few if any highway movements of molten sulfur in Kentucky which are only intrastate. Most molten sulfur is moved by rail which is not under the purview of this administrative regulation.
1. First year: $1,000 - $5,000.
2. Continuing costs or savings: $1,000 - $5,000.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: The hazardous materials transportation must still be applied for by all motor carriers.
(2) Effects on the promulgating administrative body: The Vehicle Enforcement Officers will have to be aware of the packaging and placarding requirements for molten sulfur.
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Applications for permits will still have to be processed.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected since USDOT amended 49 CFR and KRS 174.410 requires the Transportation Cabinet to adopt the applicable portions.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: The only substantive amendment to the regulation was to include the latest amendment to 49 CFR regarding the transportation of molten sulfur. It has been classified as a hazardous material because of USDOT's belief that molten sulfur may pose an unreasonable risk to health and safety or commerce when transported in commerce.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: While the federal government does not mandate that hazardous materials be regulated intrastate, KRS 174.410 mandates the adoption of 49 CFR to carry

out the intent of KRS 174.400 to 174.435.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: The state regulation imposes a permit fee not found in the federal regulations.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: The permit fee is allowed by KRS 174.430.

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

601 KAR 9:090. Procedures for inspecting vehicles.

RELATES TO: KRS 186A.115
PURSUANT TO: KRS 186A.020, 186A.115
NECESSITY AND FUNCTION: This regulation sets forth an alternate procedure for inspecting vehicles.

Section 1. If an owner of a vehicle does not have the title to that vehicle available at the time of the vehicle's physical inspection, the certified motor vehicle inspector shall be allowed to inspect the vehicle and complete the certified inspector section of the application for title. However, the certified inspector shall neither [not] sign nor date the application for title until the title for that vehicle has been surrendered to the certified motor vehicle inspector for examination and verification.

Section 2. If the federal safety standard label which appears on the door of the vehicle is either missing or is rendered illegible, the certified motor vehicle inspector shall document this discrepancy on the application. The certified motor vehicle inspector may then certify the inspection by using both the vehicle identification number plate and the corresponding number on the vehicle title document.

Section 3. The certified motor vehicle inspector may inspect and certify a specially constructed or reconstructed vehicle when no outstanding motor vehicle title or manufacturers [manufacturing] statement of origin document exists. However, an application for specially constructed or reconstructed vehicle title shall also [must] be completed in accordance with 601 KAR 9:047.

Section 4. An owner [Owners] who is [are] applying for a salvage title under KRS 186A.335, that is, one for a vehicle which is not capable of and shall not be driven on a public highway is [are] not required to have a certified motor vehicle inspection.

Section 5. A certified motor vehicle inspector is prohibited from inspecting any vehicle for which he has an interest or ownership or if the vehicle is owned by his [or her] immediate family.

Section 6. Before executing the certificate of inspection for a specially constructed or reconstructed vehicle, a certified motor vehicle inspector shall perform a physical inspection of each vehicle. As part of the physical inspection the certified vehicle inspector shall insure that the vehicle complies with all equipment and safety requirements of KRS Chapter 189. The certified inspector may only execute the certificate of inspection if the vehicle does comply with the equipment and safety requirements.

MILO D. BRYANT, Secretary
APPROVED BY AGENCY: July 1, 1988
FILED WITH LRC: July 5, 1988 at 11 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 26, 1988 at 1 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 21, 1988 so notify: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, Tenth Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: Owners of the 20,000 specially constructed or reconstructed vehicles each year and the 1,200 certified vehicle inspectors in Kentucky.
(a) Direct and indirect costs or savings to those affected: By mandating that all specially constructed or reconstructed vehicles be inspected prior to titling, we have uniformity statewide in the treatment of applicants. However, as many as 250 vehicles out of 20,000 inspected each year don't initially pass inspection. Since most of these vehicles are constructed for resale it delays the resale of the vehicles until a title can be obtained. The average price of the vehicles is $3,000.
1. First year: Same
2. Continuing costs or savings: Same each year.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Completion of an application for title is required prior to the inspection of a specially constructed or reconstructed vehicle.
(2) Effects on the promulgating administrative body: Ensures that all rebuilt vehicles put back on the road are safe.
(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: Review of application for title, but it is required before the vehicle can be sold.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: We considered not including the physical inspection requirement in the regulation. However, that was rejected because the Kentucky State Police felt the policy was needed in 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: None
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

TRANSPORTATION CABINET
Deparment of Vehicle Regulation
Division of Driver Licensing
(Proposed Amendment)

601 KAR 13:020. Point system.

RELATES TO: KRS 186.570, 186.572, 189.990(6)
PURSUANT TO: KRS 186.400
NECESSITY AND FUNCTION: This regulation specifies the driver licensing [so-called "]point system in which [" whereby each] traffic offense convictions are [is] assigned a certain number of points, according to the seriousness of the offense as determined by either accident-cause statistics or by statute. Certain offenses have proven so dangerous that they[, along with certain license violations,] are made cause for suspension periods rather than point accumulation. The purpose of the point system [this] is to establish a criterion whereby the discretion allowed the Transportation Cabinet in determining the "habitually reckless or negligent driver" or the "serious violator" will not be exercised arbitrarily and capriciously, but each license holder will be treated like every other one, and each will know or can determine his ["]point["] status at any given time.

Section 1. Definitions. "Probation" means that a pending driving privilege suspension period is held in abeyance provided the person attends an approved driver improvement clinic and provided his driving privilege has not been withdrawn in any other jurisdiction.

Section 2. [1.] To assist the Transportation Cabinet in making a determination that a person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws in accordance with KRS 186.570 a schedule of penalty points is [hereby] established for the purpose of denying, withdrawing, suspending or revoking that person's driving privilege and operator's license. Value points for the various classifications of moving traffic offenses, or a driving privilege suspension period for certain named offenses, shall be assessed as set out in Sections 3 and 4 [2 and 3] of this regulation for all persons. Points shall be assessed or driving privilege suspensions invoked for conviction, forfeiture of bail, or payment of fine, with or without a court appearance, for the enumerated offenses whether the conviction is received from a court of competent jurisdiction within the Commonwealth of Kentucky or any other jurisdiction, except that out-of-state speeding offenses shall not be considered by the cabinet. Information regarding convictions may be secured from any official source or record available to public or cabinet inspection. Complete records of driving privilege suspensions and point system assessments shall be maintained in the Transportation Cabinet for a period of five (5) years.

Section 3. [2.] Conviction for any one of the following serious violations of the motor vehicle laws shall be cause for suspension of the driving privilege of the person so convicted for the period of time indicated:
Racing.....90 days
Speeding 26 MPH or more over limit.....90 days
Attempting to elude law enforcement officer by use of motor vehicle.....90 days

Section 4. [3.] Conviction for any one of the following moving traffic offenses shall be cause for assessment of the penalty points indicated:
Speeding 15 MPH or less over the limit.....3
(Except [that pursuant to KRS 186.572] when the moving hazardous violation occurred on a limited access highway [or a limited access highway] of four (4) or more lanes in Kentucky on which the speed limit is 55 MPH or higher, no penalty points shall be assessed for a speeding conviction of 10 [15] MPH or less over the limit.)
Speeding 16 MPH or more, but less than 26 MPH, over the limit.....6
Failure to stop for church or school bus.....6
Improper passing.....5
Reckless driving.....4
Driving on wrong side of road.....4
Following too closely.....4
Failure to yield to emergency vehicle.....4
Changing drivers in a moving vehicle.....4
Vehicle not under control.....4
Stop violation (electric signal, railroad crossing, stop sign).....3
Failure to yield.....3
Wrong way on one-way street.....3
Too fast for conditions.....3
Too slow for conditions.....3
Improper start.....3
Improper driving.....3
Careless driving.....3
Failure to yield left lane.....3
Improper lane usage.....3
Failure to illuminate headlights.....3
Failure to dim headlights.....3
Any other moving hazardous violations.....3
Commission of a moving hazardous violation which involves an accident.....6
Combination of two or more moving hazardous violations in any one occurrence.....6

Section 5. [4.] If a person accumulates six (6) or more penalty points within a two (2) year period, the Transportation Cabinet may send a letter to the address shown on his driving history record that shall advise him of the number of penalty points on his driving history record. The letter shall inform the person of the penalties which may be imposed if he were to accumulate twelve (12) points within two (2) years.

Section 6. [5.] (1) If a person accumulates twelve (12) points within a period of two (2) years, the cabinet may suspend the driving privilege of such person for a period of six (6) months for the first such accumulation of twelve (12) points, one (1) year for the second such accumulation of twelve (12) points, and two (2) years for any subsequent accumulation of twelve (12) points within a two (2) year period.

(2) For any offense for which the suspension of the driving privilege is six (6) months or less for the first offense, the second conviction of a similar offense shall result in a suspension period of not less than one (1) year, and any subsequent conviction for any similar offense not less than two (2) years.

Section 7. If the cabinet suspends the driving privilege of a person more than one (1) time under the provisions of this administrative regulation, the suspension times shall run consecutively.

Section 8. [6.] (1) Any person who accumulates twelve (12) points or more within a period of two (2) years, or who is convicted of any offense that could result in a suspension of his driving privilege under the provisions of this regulation, may be placed on probation in lieu of suspension. The probation period shall be two (2) times the length of time the suspension would have been if imposed.

(2) ["Probation" for the purpose of this regulation means that a pending driving privilege suspension period is held in abeyance provided the person attends an approved driver improvement clinic and provided his driving privilege is not suspended in any other jurisdiction.] If a person on probation receives an additional conviction for a moving traffic offense with or without court appearance, or upon his failure to successfully enroll in and complete the driver improvement clinic, the person shall have his driving privilege in Kentucky suspended for the period of time outlined in Section 6 [5](1) and (2) of this regulation. [If a person has been convicted of driving under the influence of intoxicants in a foreign jurisdiction, probation may include successful completion of the alcohol driver education course in lieu of the driver improvement clinic.]

(3) Once a person has been placed on probation by the cabinet, he shall not be considered for probation again until a lapse of two (2) years from the ending date of the [any previous] probation period granted, whether served or not.

(4) If a [the] person whose driving privilege has been suspended under the provisions of this administrative regulation becomes [is] eligible for probation, the cabinet may waive the remainder of a driving privilege suspension period [after he has served one-half (1/2) of it]. Upon this waiver, the cabinet shall place the driver on probation for two (2) times the amount of time remaining on the suspension period.

Section 9. [7.] Any person who holds a valid operator's license from another licensing jurisdiction and who after establishing residence in Kentucky applies to become a valid license holder may be considered for an operator's license in Kentucky. However, such person's driving privilege shall not be under suspension or revocation by any jurisdiction at the time of his application in Kentucky.

Section 10. [8.] When a conviction report is used by the Transportation Cabinet to impose a driving privilege suspension or probation, it shall never be used for the imposition of an unrelated suspension or probation. It may be used to show that the person's driving privilege has previously been suspended.

Section 11. [9.] No person's driving privilege shall be suspended under any section of this regulation without his first being offered a hearing, unless the [such] hearing offer has been waived.

Section 12. [10.] (1) As soon as the Transportation Cabinet is made aware that a person has committed sufficient offenses that his driving privilege is placed in jeopardy, the cabinet shall establish a time and place for the hearing on the matter. The cabinet shall notify that person of the hearing by first class mail delivered to his last known address as reflected on the person's driving history record.

(2) The person shall appear for the hearing at the established time and place. The hearing shall be conducted by an appointed representative of the Transportation Cabinet. The testimony given at the hearing shall be recorded and such recordings retained by the cabinet for a period of sixty (60) days.

(3) Based upon the evidence and testimony received at the hearing and the person's driving history record, the hearing officer shall determine whether the cabinet may withdraw the person's driving privilege. If he determines that the cabinet may withdraw the person's driving privilege, he may either order suspending the person's driving privilege or grant probation to the person.

(4) If probation is granted, the terms shall be carefully explained to the person. The person shall indicate his understanding and acceptance of those terms by signing a standard form prepared by the Transportation Cabinet.

(5) If probation is not granted the person, the hearing officer shall prepare the order suspending the person's driving privilege at the close of the hearing. The effective date of the suspension shall be included in the order. The hearing officer shall hand the order to the person prior to his departure.

(6) The person may in writing file a grievance with the Transportation Cabinet if he is aggrieved by any action taken by the cabinet under the guidelines of this administrative regulation. The grievance shall state the reasons he believes the Transportation Cabinet has taken erroneous action. In not less than fifteen (15) nor more than thirty (30) days thereafter the aggrieved party may file an action against the Transportation Cabinet in the circuit court of the county in which he resides or in Franklin Circuit Court.

MARJORIE C. KLEE, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: July 5, 1988
FILED WITH LRC: July 15, 1988 at 9 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 26, 1988 at 8 a.m. local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at th corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 21, 1988 so notify: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, Tenth Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All licensed drivers in Kentucky.
(a) Direct and indirect costs or savings to those affected: Because of new laws enacted by the 1988 GA, there are now more reasons why a person can accumulate points against his driving history record. However, the number of points required before suspension of driving privilege remained at 12. Therefore, a person would still have to accumulate more than one conviction of a type for which points were assigned before his driving privilege would be in jeopardy. Therefore, there is no change in the direct or indirect cost or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: The hearing is required by state law. However this regulation requires the licensee to request a hearing.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: The driver licensing computer system will have to be reprogrammed to assess points in compliance with new laws.
1. First year: $1,000
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Required by law to have a hearing and to maintain driving history records. Therefore, none by this regulation.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Considered allowing points to be accumulated on a limited access highway where the speed limit is 55 mph. This was rejected if the person was going 10 mph or less over the limit because SB 6 requires that no points be given for going 10 mph or less over the limit where the speed limit is 65 mph. Frequently, the Transportation Cabinet would be unable to readily establish (from the conviction reports) the speed limit on a limited access highway from the conviction reports. Making the points consistent reduces the chance for error.
(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: Changes were needed because of HB 220, HB 901, SB 6 and SB 147.
TIERING: Was tiering applied? Yes

TRANSPORTATION CABINET
Department of Vehicle Regulation
(Proposed Amendment)

601 KAR 14:010. Headgear and eye-protective devices.

RELATES TO: KRS 189.285, 49 CFR Part 571.218
PURSUANT TO: KRS 174.080, 189.285, 49 CFR Part 571.218
NECESSITY AND FUNCTION: KRS 189.285 requires the Secretary of Transportation, by regulation, to fix minimum standards for approved protective headgear, approved eye-protective devices, and prescribe the manner in which they shall be used. He is also required to maintain and cause to be published a list of approved protective headgear and approved eye-protective devices. This regulation is designed to comply with the statutory requirements.

Section 1. No. person shall operate or ride as a passenger on a motorcycle unless such person wears protective headgear which meets the standards set forth [as adopted] in Section 3 [and 4] of this regulation.

Section 2. No person shall operate or ride as a passenger on a motorcycle unless such person wears an eye-protective device which meets the standards set forth [as adopted] in Section 4 [5] of this regulation.

Section 3. Federal Motor Vehicle Safety Standards: [No. 218,] Motorcycle Helmets as set forth in 49 CFR Part 571.218 effective October 3, 1988 [of March 1, 1974, and future amendments and revisions thereto,] adopted and issued by the National Highway Traffic Safety Administration, U.S. Department of Transportation, specifies the standards for approved protective headgear to be followed in Kentucky. [are hereby adopted insofar as they do not conflict with the laws of Kentucky.]

[Section 4. Specifications for Protective Headgear for Vehicle Users as of August 26, 1971, and future amendments and revisions thereto, approved and issued by the American National Standards Institute, Inc., are hereby adopted insofar as they do not conflict with the laws of Kentucky.]

Section 4. [5.] Minimum Requirements for Motorcyclists' Eye Protection, adopted [as of] August 5, 1971, and amended July, 1980 [future amendments and revisions thereto, adopted and issued] by the Vehicle Equipment Safety Commission are hereby adopted and incorporated by reference in this administrative regulation. [insofar as they do not conflict with the laws of Kentucky.]

Section 5. [6.] The following shall constitute the lists of approved protective headgear and approved eye-protective devices as contemplated by KRS 189.285:
(1) For protective headgear, any motorcycle helmet which has been permanently and legibly labeled with the symbol "DOT". The symbol shall appear on the outer surface in a color that contrasts with the background, in letters at least one (1) centimeter high. It shall be located a minimum of two and nine-tenths (2.9) centimeters and a maximum of three and

five-tenths (3.5) centimeters from the bottom edge of the posterior of the helmet. [that list published by the American Association of Motor Vehicle Administrators under date of March 15, 1975, and future amendments and revisions thereto.]

(2) For eye protective devices, any motorcyclists' eye protection which has been permanently and legibly marked on the structure of each lens in a manner so as not to interfere with the vision of the wearer either "VESC-8" or where space is limited "V-8". [that list published by the American Association of Motor Vehicle Administrators under date of September 15, 1975, and future amendments and revisions thereto.]

Section 6. [7.] A copy of the standards cited in Section 4 of this administrative regulation may be viewed at the Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622. [, specifications and lists mentioned hereinabove is hereby incorporated by reference as part of this regulation. Subsequent amendments to any of the above-mentioned documents will be filed as any other regulation.]

MARJORIE C. KLEE, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: June 28, 1988
FILED WITH LRC: July 1, 1988 at 2 p.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 26, 1988, at 11 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 21, 1988 so notify: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, Tenth Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: Operators of 38,500 motorcycles in Kentucky.
(a) Direct and indirect costs or savings to those affected: Minimal, the requirements for eye and head protectors have been in place for many years. The standards, while set forth anew, have changed almost not at all.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: In the past a list of companies manufacturing eye and head protectors were incorporated into the regulation. Those lists have been discontinued because USDOT now requires that all helmets have a stamp on them and no longer require companies to register.
(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 motorcycle operators are equally exposed and all are therefore required to obtain safe head and eye protectors.

TRANSPORTATION CABINET
Department of Highways
Division of Traffic
(Proposed Amendment)

603 KAR 3:051. Recyclers.

RELATES TO: KRS 177.905 to 177.950
PURSUANT TO: KRS 177.935
NECESSITY AND FUNCTION: KRS 177.935 authorizes the Department of Highways to exercise general supervision of the administration and enforcement of KRS 177.905 to 177.950. This regulation pertaining to the operation of automobile, vehicle, machinery or material recycling establishments has been adopted to enable the Transportation Cabinet's Department of Highways to administer and enforce the recycler program requirements.

[Section 1. No person shall operate or cause to be operated any recycling establishment or place of business within 1,000 feet of the right-of-way line of any road as hereinafter defined, except for the following:]
[(1) Those recycling establishments or places of business which comply with KRS 177.905 through 177.950 and these regulations; and]
[(2) A recycling establishment or place of business which is located in an industrially zoned area and is a conforming land use under applicable zoning ordinances and regulations of any county or city.]

Section 1. [2.] Definitions. (1) "Automobile, vehicle or machinery recycler[s]" shall have the same meaning as KRS 177.905(2) [means any place where five (5) or more junked, wrecked or nonoperative automobiles, vehicles, machinery or other similar scrap or salvage materials are deposited, parked, placed or otherwise located, or any business as defined in subsection (9) of this section where ten (10) or more junked, wrecked or nonoperative automobiles, vehicles, machines and other similar scrap or salvage materials are deposited, parked, placed or otherwise located].
[(2) "Department" means the Department of Highways in the Transportation Cabinet.]
[(3) "Commissioner" means the Commissioner of the Department of Highways.]
(2) [(4)] "Material recycler[s]" shall have the same meaning as KRS 177.905(4) [means any establishment or place of business, including garbage dumps and sanitary landfills, maintained, operated, or used for storing, keeping, buying or selling of old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste, or motor vehicle

parts, iron, steel, and other old scrap ferrous or nonferrous material] except[ing therefrom] any containers, such as trash ["dempster] dumpsters,["] which are maintained, operated or used for storing or keeping garbage, trash and other waste material are excluded.

(3) [(5)] "Operator or operators" shall have the same meaning as KRS 177.905(5) [means any person, firm or corporation operating an automobile, vehicle, machinery or material recycling establishment or place of business or allowing such automobile, vehicle, machinery or material recycling establishment or place of business to be placed, or deposited, or to remain on the premises owned or controlled by such person, firm or corporation].

(4) [(6)] "Person" shall have the same meaning as KRS 177.905(6) [means any individual, firm, agency, company, association, partnership, business trust, joint stock company, body politic or corporation].

(5) [(7)] "Recycling establishment" or "place of business" means any place operated, maintained or allowed to exist by any automobile, vehicle or machinery recycler[s] or any material recycler[s].

(6) [(8)] "Road" shall have the same meaning as KRS 177.905(1) [means any county, state, federal or limited access highway or turnpike, including bridges and bridge approaches].

(7) [(9)] "Business" shall have the same meaning as KRS 177.905(3) [means any person engaged as an automobile dealer, body shop operator, wrecker service operator, service station operator or other activity which may buy, sell or repair nonoperative vehicles, automobiles or machinery as a service].

Section 2. [3.] General Provisions. (1) No junked, wrecked or inoperable automobiles, vehicles, machinery or material scrap or parts shall be placed, deposited or otherwise located on the right-of-way of any road.

(2) Every [Any] recycling establishment or place of business shall be [required to be] completely hidden from view of the travelling motorist, for 1,000 feet in each direction from the outer limits of the premises or storage area, and to a depth of 1,000 feet from the right-of-way line, along all roads.

(3) Any recycling establishment or place of business required by KRS 177.910 to obtain a permit which cannot as a practical matter be screened from view of the travelling motorist on all roads shall not be issued a permit and shall [must] be removed.

[(4) The operation of any automobile, vehicle, machinery, or material recycling establishment or place of business which is located within 1,000 feet of the right-of-way of any road, without a permit from the Department of Highways, is declared to be a public nuisance.]

(4) [(5)] If [In the event] an operator begins a recycling establishment or place of business in a new location, the [such] location shall [must] be screened to comply with provisions of this regulation and the operator shall have applied for and obtained a current permit prior to its operation [the establishment thereof].

Section 3. [4.] Measurements. (1) In determining the 1,000 feet control distance from the right-of-way required by KRS 177.910, the measurements shall be taken horizontally along a line at the same elevation and at a right angle to the center line of the highway.

(2) In measuring the 1,000 feet from the outer limits of the premises or storage area, in each direction, on all roads, two (2) lines shall be drawn perpendicular to the center line of the main traveled way of the road, so as to cause the two (2) lines to embrace the greatest longitude along the center line of the main traveled way of the road.

Section 4. [5.] Standards for Screening. (1) Completed screening shall [must] completely hide all junked, wrecked, or inoperable automobiles, vehicles, machinery, and materials from view of the traveling public on all roads on a year-round basis.

(2) Materials for screening shall [must] present an attractive appearance. No wrinkled or bent metal shall [will] be accepted.

(3) The completed screening shall [must] present a neat and clean appearance.

(4) The piecing together [Piecing out] of metal or wood panels or other patchwork type screening shall [will] not be accepted.

(5) Unless a continuous overall neat design is created, all metal or wood panels shall [must] be erected vertically.

(6) Fencing used for screening shall [must] be of uniform height and alignment unless a variation is applied for and approved by the Department of Highways.

(7) Completed screening shall [must] blend with the surrounding area as much as possible.

(8) If [In the event] fencing materials must be painted in order to blend with the surrounding area, the colors and shades of buildings and other structures in the area may be taken into account in determining the color and shade to be used on such fencing materials.

(9) If a building or other structure is to be used as a portion of the screening, the building or structure may be required by the Deparment of Highways to be painted[, if it is deemed necessary,] in order to blend with the other portions of screening and the surrounding area.

(10) If screening is to be effected by the use of plantings of trees or shrubs, the plantings to be used shall [must] be of sufficient height and density at planting [maturity] to screen the recycling establishment or place of business from view of the travelling motorists on a year-round basis on all roads where control is exercised.

(11) Any operator of a recycling establishment or place of business shall file with his [an] application for a permit a plat [from the Department of Highways. A plot] detailing the area to be used for the storing or keeping of recycling material, automobiles, vehicles or machinery, the location, height, length, kind of material to be used for screening and color of paint if required[, shall accompany and be made a part of the application].

(12) Approval of a screening proposal shall [should] be obtained from the Department of Highways prior to the erection of fencing or the planting of trees or shrubs to effect the screening required to hide the storage area from view of the travelling public. Failure to obtain such approval in advance may result in the necessity of removing and reerecting part or all screening in order to comply with standards for screening as set forth in this section.

Section 5. [6.] Requirements for Permit and

Fee. (1) An application for a permit [is] required by KRS 177.910 for the operation of a recycling establishment or place of business shall be made on forms prescribed and furnished by the Department of Highways.

(2) The completed application form shall be filed with the Highway District Office serving the county in which the proposed business lies. Permits shall be issued in the following manner:

(a) Permits shall be issued for a two (2) year period, or portion thereof, beginning on July 1 of even numbered years.

(b) Any recycling establishment or place of business existing or in operation on July 1 of an even numbered year[s] shall [must] remit the full permit fee regardless of the date of compliance with [the] Kentucky law and regulations.

(c) Any new recycling establishment or place of business which comes into existence after July 1 of an even numbered year[s] shall [must] remit a permit fee on a prorated basis based on [as of] the beginning date of the operation regardless of the date of compliance with [the] Kentucky law and regulations.

(d) Even though the permit fee set by KRS 177.920 is [shall be] fifty (50) dollars for a [the] two (2) year period if a new business begins operation [.

(e)] the permit fee shall be two (2) dollars and eight (8) cents per month for each month remaining in the two (2) year period[, upon the beginning of a new operation].

(e) [(f)] Permit fees paid in the form of a check or money order shall [must] be made payable to the "Treasurer, Commonwealth of Kentucky."

(f) [(g)] Permit fees shall [will] not be accepted by the Department of Highways until the recycling establishment or place of business is in full compliance with [the] Kentucky law and regulations at which time the applicant shall be billed.

Section 6. [7.] Revocation of Permits. (1) Failure to comply with [the] Kentucky law and regulations shall be cause for the revocation of a permit.

(2) If a recycling establishment or place of business is found to [be] not be in compliance, a reasonable time period may [shall] be allowed for the operator to comply with Kentucky law and regulations.

Section 7. [8.] Appeal of Permit Revocation. (1) Any business or person aggrieved by an action taken by the Department of Highways in administering this regulation or the referenced Kentucky Revised Statutes may request a formal hearing. The request for the hearing shall be filed in writing with the Commissioner, Department of Highways and shall set forth the nature of the complaint and the grounds for the appeal.

(2) Within sixty (60) days of receipt of the hearing request, the Department of Highways shall notify the complainant of the date, time, and location of the hearing.

(3) At the time and place set for the hearing, the complainant may [will be able to] present any [and all] evidence relevant to the disposition of his complaint.

(4) Within thirty (30) days after the hearing an order on the complaint shall be issued by the Commissioner of the Department of Highways. A copy shall immediately be mailed to the complainant.

MILO D. BRYANT, Secretary
O. GILBERT NEWMAN, State Highway Engineer
APPROVED BY AGENCY: July 12, 1988
FILED WITH LRC: July 15, 1988 at 9 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 26, 1988 at 11:30 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 21, 1988 so notify: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: 200 recycler establishments in Kentucky.

(a) Direct and indirect costs or savings to those affected: None, if screening has been accomplished with other than immature plants which don't screen the establishment from the highway. SB 277 passed by the 1988 GA forbids the use of these immature plantings. Since this administrative regulation specifically permitted these immature plantings, it had to be amended. However, the amendment to the regulation imposes no costs or savings not already imposed by state law.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The amendment requires none.

(2) Effects on the promulgating administrative body: Because of the change in state law, the Transportation Cabinet will have to review each recycler as it applies for relicensing to ensure that it complies with the state law. However, the amendment to the regulation has no additional effect on the cabinet.

(a) Direct and indirect costs or savings: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None. State law changed so the regulation had to be changed.

(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

TRANSPORTATION CABINET
Department of Highways
Division of Traffic
(Proposed Amendment)

603 KAR 3:051. Recyclers.

RELATES TO: KRS 177.905 to 177.950
PURSUANT TO: KRS 177.935
NECESSITY AND FUNCTION: KRS 177.935 authorizes the Department of Highways to exercise general supervision of the administration and enforcement of KRS 177.905 to 177.950. This regulation pertaining to the operation of automobile, vehicle, machinery or material recycling establishments has been adopted to enable the Transportation Cabinet's Department of Highways to administer and enforce the recycler program requirements.

[Section 1. No person shall operate or cause to be operated any recycling establishment or place of business within 1,000 feet of the right-of-way line of any road as hereinafter defined, except for the following:]

[(1) Those recycling establishments or places of business which comply with KRS 177.905 through 177.950 and these regulations; and]

[(2) A recycling establishment or place of business which is located in an industrially zoned area and is a conforming land use under applicable zoning ordinances and regulations of any county or city.]

Section 1. [2.] Definitions. (1) "Automobile, vehicle or machinery recycler[s]" shall have the same meaning as KRS 177.905(2) [means any place where five (5) or more junked, wrecked or nonoperative automobiles, vehicles, machinery or other similar scrap or salvage materials are deposited, parked, placed or otherwise located, or any business as defined in subsection (9) of this section where ten (10) or more junked, wrecked or nonoperative automobiles, vehicles, machines and other similar scrap or salvage materials are deposited, parked, placed or otherwise located].

[(2) "Department" means the Department of Highways in the Transportation Cabinet.]

[(3) "Commissioner" means the Commissioner of the Department of Highways.]

(2) [(4)] "Material recycler[s]" shall have the same meaning as KRS 177.905(4) [means any establishment or place of business, including garbage dumps and sanitary landfills, maintained, operated, or used for storing, keeping, buying or selling of old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste, or motor vehicle parts, iron, steel, and other old scrap ferrous or nonferrous material] except[ing therefrom] any containers, such as trash ["dempster] dumpsters,["] which are maintained, operated or used for storing or keeping garbage, trash and other waste material are excluded.

(3) [(5)] "Operator or operators" shall have the same meaning as KRS 177.905(5) [means any person, firm or corporation operating an automobile, vehicle, machinery or material recycling establishment or place of business or allowing such automobile, vehicle, machinery or material recycling establishment or place of business to be placed, or deposited, or to remain on the premises owned or controlled by such person, firm or corporation].

(4) [(6)] "Person" shall have the same meaning as KRS 177.905(6) [means any individual, firm, agency, company, association, partnership, business trust, joint stock company, body politic or corporation].

(5) [(7)] "Recycling establishment" or "place of business" means any place operated, maintained or allowed to exist by any automobile, vehicle or machinery recycler[s] or any material recycler[s].

(6) [(8)] "Road" shall have the same meaning as KRS 177.905(1) [means any county, state, federal or limited access highway or turnpike, including bridges and bridge approaches].

(7) [(9)] "Business" shall have the same meaning as KRS 177.905(3) [means any person engaged as an automobile dealer, body shop operator, wrecker service operator, service station operator or other activity which may buy, sell or repair nonoperative vehicles, automobiles or machinery as a service].

Section 2. [3.] General Provisions. (1) No junked, wrecked or inoperable automobiles, vehicles, machinery or material scrap or parts shall be placed, deposited or otherwise located on the right-of-way of any road.

(2) Every [Any] recycling establishment or place of business shall be [required to be] completely hidden from view of the travelling motorist, for 1,000 feet in each direction from the outer limits of the premises or storage area, and to a depth of 1,000 feet from the right-of-way line, along all roads.

(3) Any recycling establishment or place of business required by KRS 177.910 to obtain a permit which cannot as a practical matter be screened from view of the travelling motorist on all roads shall not be issued a permit and shall [must] be removed.

[(4) The operation of any automobile, vehicle, machinery, or material recycling establishment or place of business which is located within 1,000 feet of the right-of-way of any road, without a permit from the Department of Highways, is declared to be a public nuisance.]

(4) [(5)] If [In the event] an operator begins a recycling establishment or place of business in a new location, the [such] location shall [must] be screened to comply with provisions of this regulation and the operator shall have applied for and obtained a current permit prior to its operation [the establishment thereof].

Section 3. [4.] Measurements. (1) In determining the 1,000 feet control distance from the right-of-way required by KRS 177.910, the measurements shall be taken horizontally along a line at the same elevation and at a right angle to the center line of the highway.

(2) In measuring the 1,000 feet from the outer limits of the premises or storage area, in each direction, on all roads, two (2) lines shall be drawn perpendicular to the center line of the main traveled way of the road, so as to cause the two (2) lines to embrace the greatest longitude along the center line of the main traveled way of the road.

Section 4. [5.] Standards for Screening. (1) Completed screening shall [must] completely hide all junked, wrecked, or inoperable automobiles, vehicles, machinery, and materials from view of the traveling public on all roads on a year-round basis.

(2) Materials for screening shall [must] present an attractive appearance. No wrinkled or bent metal shall [will] be accepted.

(3) The completed screening shall [must] present a neat and clean appearance.

(4) The piecing together [Piecing out] of metal or wood panels or other patchwork type screening shall [will] not be accepted.

(5) Unless a continuous overall neat design is created, all metal or wood panels shall [must] be erected vertically.

(6) Fencing used for screening shall [must] be of uniform height and alignment unless a variation is applied for and approved by the Department of Highways.

(7) Completed screening shall [must] blend with the surrounding area as much as possible.

(8) If [In the event] fencing materials must be painted in order to blend with the surrounding area, the colors and shades of buildings and other structures in the area may be taken into account in determining the color and shade to be used on such fencing materials.

(9) If a building or other structure is to be used as a portion of the screening, the building or structure may be required by the Deparment of Highways to be painted[, if it is deemed necessary,] in order to blend with the other portions of screening and the surrounding area.

(10) If screening is to be effected by the use of plantings of trees or shrubs, the plantings to be used shall [must] be of sufficient height and density at planting [maturity] to screen the recycling establishment or place of business from view of the travelling motorists on a year-round basis on all roads where control is exercised.

(11) Any operator of a recycling establishment or place of business shall file with his [an] application for a permit a plat [from the Department of Highways. A plot] detailing the area to be used for the storing or keeping of recycling material, automobiles, vehicles or machinery, the location, height, length, kind of material to be used for screening and color of paint if required[, shall accompany and be made a part of the application].

(12) Approval of a screening proposal shall [should] be obtained from the Department of Highways prior to the erection of fencing or the planting of trees or shrubs to effect the screening required to hide the storage area from view of the travelling public. Failure to obtain such approval in advance may result in the necessity of removing and reerecting part or all screening in order to comply with standards for screening as set forth in this section.

Section 5. [6.] Requirements for Permit and Fee. (1) An application for a permit [is] required by KRS 177.910 for the operation of a recycling establishment or place of business shall be made on forms prescribed and furnished by the Department of Highways.

(2) The completed application form shall be filed with the Highway District Office serving the county in which the proposed business lies. Permits shall be issued in the following manner:

(a) Permits shall be issued for a two (2) year period, or portion thereof, beginning on July 1 of even numbered years.

(b) Any recycling establishment or place of business existing or in operation on July 1 of an even numbered year[s] shall [must] remit the full permit fee regardless of the date of compliance with [the] Kentucky law and regulations.

(c) Any new recycling establishment or place of business which comes into existence after July 1 of an even numbered year[s] shall [must] remit a permit fee on a prorated basis based on [as of] the beginning date of the operation regardless of the date of compliance with [the] Kentucky law and regulations.

(d) Even though the permit fee set by KRS 177.920 is [shall be] fifty (50) dollars for a [the] two (2) year period if a new business begins operation [.

(e)] the permit fee shall be two (2) dollars and eight (8) cents per month for each month remaining in the two (2) year period[, upon the beginning of a new operation].

(e) [(f)] Permit fees paid in the form of a check or money order shall [must] be made payable to the "Treasurer, Commonwealth of Kentucky."

(f) [(g)] Permit fees shall [will] not be accepted by the Department of Highways until the recycling establishment or place of business is in full compliance with [the] Kentucky law and regulations at which time the applicant shall be billed.

Section 6. [7.] Revocation of Permits. (1) Failure to comply with [the] Kentucky law and regulations shall be cause for the revocation of a permit.

(2) If a recycling establishment or place of business is found to [be] not be in compliance, a reasonable time period may [shall] be allowed for the operator to comply with Kentucky law and regulations.

Section 7. [8.] Appeal of Permit Revocation. (1) Any business or person aggrieved by an action taken by the Department of Highways in administering this regulation or the referenced Kentucky Revised Statutes may request a formal hearing. The request for the hearing shall be filed in writing with the Commissioner, Department of Highways and shall set forth the nature of the complaint and the grounds for the appeal.

(2) Within sixty (60) days of receipt of the hearing request, the Department of Highways shall notify the complainant of the date, time, and location of the hearing.

(3) At the time and place set for the hearing, the complainant may [will be able to] present any [and all] evidence relevant to the disposition of his complaint.

(4) Within thirty (30) days after the hearing an order on the complaint shall be issued by the Commissioner of the Department of Highways. A copy shall immediately be mailed to the complainant.

MILO D. BRYANT, Secretary
O. GILBERT NEWMAN, State Highway Engineer
APPROVED BY AGENCY: July 12, 1988
FILED WITH LRC: July 15, 1988 at 9 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 26, 1988 at 11:30 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 21, 1988 so notify: Sandra G. Pullen, Executive's Staff Advisor,

Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: 200 recycler establishments in Kentucky.
(a) Direct and indirect costs or savings to those affected: None, if screening has been accomplished with other than immature plants which don't screen the establishment from the highway. SB 277 passed by the 1988 GA forbids the use of these immature plantings. Since this administrative regulation specifically permitted these immature plantings, it had to be amended. However, the amendment to the regulation imposes no costs or savings not already imposed by state law.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: The amendment requires none.
(2) Effects on the promulgating administrative body: Because of the change in state law, the Transportation Cabinet will have to review each recycler as it applies for relicensing to ensure that it complies with the state law. However, the amendment to the regulation has no additional effect on the cabinet.
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None. State law changed so the regulation had to be changed.
(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

TRANSPORTATION CABINET
Department of Highways
Division of Planning
(Proposed Amendment)

603 KAR 5:070. Truck dimension limits.

RELATES TO: KRS 189.222
PURSUANT TO: KRS 189.222(1)
NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for trucks using the State Primary Road System. This regulation is adopted to fix the maximum dimensions for all classes of highways.

Section 1. Except as provided in Section 2 of this regulation, the maximum dimensions for trucks using all class highways shall be as follows:

(1) Height: including body and load, not to exceed thirteen (13) feet and six (6) inches.
(2) Width: including body and load, not to exceed eight (8) feet.
(3) Length.
(a) Motor truck (single unit), including any part of the body or load, not to exceed forty-five (45) feet.
(b) Truck tractors and semitrailers, including any part of the body or load, not to exceed fifty-five (55) feet, except for truck tractors and semitrailer units exclusively engaged in the transportation of motor vehicles the usual and ordinary bumper overhang of the transported vehicles is excluded in the measurement of the fifty-five (55) feet.
(4) A tolerance of not more than five (5) percent shall be permitted on length before a carrier is deemed to be in violation of this section.

Section 2. Motor vehicles with increased dimensions from that specified in Section 1 of this regulation may be operated on certain highways. These specific highways will be referred to as the IDTT (increased dimension-twin trailer) system.
(1) Motor vehicles may not exceed the following width and length dimensions when operating on those highways listed in subsection (2) of this section:
(a) Width - 102 inches including any part of the body or load.
(b) Length - semitrailers - fifty-three (53) feet when operated in tractor semitrailer combination; trailers - twenty-eight (28) feet when operated in a tractor-semitrailertrailer combination, not to exceed two (2) trailers per truck tractor. There shall be no overall length limitation on motor vehicles operating on highways listed in subsection (2) of this section so long as the requirements set forth in this subsection are met.
(2) The following highways are designated to permit the operation of motor vehicles with increased dimensions which do not exceed the limitations stated in subsection (1) of this section:
(a) The Interstate and National Defense Highway System.
(b) And the following:

Jackson Purchase Parkway - From Tennessee state line west of Fulton to US 45 Bypass.
US 45 Bypass - From Jackson Purchase Parkway west of Mayfield to Jackson Purchase Parkway north of Mayfield.
Jackson Purchase Parkway - From US 45 Bypass to I-24 in Marshall County.
Western Kentucky Parkway - From I-24 south of Eddyville to US 31W in Hardin County.
Blue Grass Parkway - From I-65 at Elizabethtown to US 60 near Versailles.
Green River Parkway - From I-65 at Bowling Green to US 60 Bypass in Owensboro.
Mountain Parkway - From I-64 east of Winchester to KY 15 north of Campton.
Mountain Parkway Extension - From end of Mountain Parkway at Campton to US 460 at Salyersville.
Daniel Boone Parkway - From US 25 north of London to KY 15 north of Hazard.
Pennyrile Parkway - From US 41A at south city limits of Hopkinsville to US 41 south of Nortonville.

US 41 - From Pennyrile Parkway near Western Kentucky Parkway to Pennyrile Parkway - From US 41 near north city limits of Madisonville to US 41 in Henderson.

US 41 - From Pennyrile Parkway at Henderson to Indiana state line.

Audubon Parkway - From Pennyrile Parkway at Henderson to US 60 Bypass in Owensboro.

Cumberland Parkway - From I-65 at Warren County line to US 27 west of Somerset.

I-471 Connector - From US 27 in Campbell County to I-471.

KY 4 - From entire circle of Lexington.

KY 10 - From new construction 4.21 miles east of Bracken County line to US 62-68 at Maysville.

KY 11 - From KY 3170 at Lewisburg to US 62-68 in Maysville.

KY 15 - From Mountain Parkway at Campton to US 119 in Whitesburg.

KY 18 - From KY 338 at Burlington to US 25 in Florence.

KY 21 - From I-75 near Berea to US 25 in Berea.

US 23 - From Ohio state line to US 119 north of Pikeville.

US 23 - From US 119 near Jenkins to Virginia state line.

US 23 Spur - From Ohio River Bridge at Ashland.

US 25 - From US 421 south of Richmond to KY 876 in Richmond.

US 25 - From KY 418 southwest of Lexington to Nandino Boulevard, in Lexington (via KY 4).

US 25 - From US 42 in Florence to Ohio state line.

US 25E - From Virginia state line to I-75 north of Corbin.

US 27 - From Tennessee state line to Ohio state line (via KY 4 in Lexington).

US 31W - From Tennessee state line to KY 255 at Park City (via US 31W Bypass in Bowling Green).

US 31W - From US 31W Bypass in Elizabethtown to I-264.

US 31W Bypass - From Western Kentucky Parkway to US 31W in Elizabethtown.

KY 32 - From I-64 west of Morehead to US 60 at Morehead.

KY 35 - From US 127 at Bromley to I-71 north of Sparta.

KY 36 - From I-64 south of Owingsville to US 60 at Owingsville.

KY 36 - From US 42 in Carrollton to KY 227.

US 41 - From US 68 (Main Street) in Hopkinsville to US 68 (McLean Avenue) in Hopkinsville.

US 41A - From Tennessee state line to Pennyrile Parkway at south city limits of Hopkinsville.

KY 41A - From KY 112 in Earlington to KY 281 and KY 1751 in Madisonville.

US 42 - From I-264 northeast of Louisville to Oldham County line.

US 42 - From KY 55 at Carrollton to KY 47 at Ghent.

US 45 - From US 45 Bypass north of Mayfield to US 62 in Paducah.

US 51 - From KY 121 in Wickliffe to Illinois state line.

KY 52 - From KY 876 in Richmond to KY 499 at Irvine.

KY 55 - From Cumberland Parkway in Columbia to US 150 at Springfield.

US 60 - From East O'Banion Avenue in Morganfield to KY 425, the Henderson Bypass.

US 60 - From US 60 Bypass west of Owensboro to KY 69 at Hawesville.

US 60 - From I-264 east of Louisville to KY 1531 at Eastwood.

US 60 - From US 421 at Frankfort to I-75 near Lexington (via Versailles and KY 4 in Lexington).

US 60 - From junction of KY 180 near Cannonsburg to US 23 in Ashland.

US 60 - From KY 144 in Meade County to US 31W at Ft. Knox.

US 60 Bypass - From US 60 west of Owensboro to US 60 east of Owensboro.

US 61 - From Tennessee state line to KY 90 at Burkesville.

US 62 - From I-24 at Paducah to Western Kentucky Parkway.

US 62 - From KY 245 at Bardstown to US 150 at Bardstown.

US 62 - From KY 353 southwest of Cynthiana to US 27 at Cynthiana.

US 68 - From I-24 in Trigg County to Green River Parkway at Bowling Green.

US 68 - From US 27 at Paris to Ohio state line at Maysville (via Paris Bypass).

KY 69 - From US 60 at Hawesville to Indiana state line.

KY 79 - From KY 1051 in Brandenburg to Indiana state line.

KY 80 - From US 27 at Somerset to US 25 north of London.

KY 80 - From KY 15 at Hazard to US 23 at Allen.

KY 90 - From I-65 at Cave City to Cumberland Parkway at Glasgow.

KY 90 - From KY 61 at Burkesville to US 27 at Burnside.

KY 114 - From US 460 east of Salyersville to US 23-460 at Prestonsburg.

KY 118 - From Daniel Boone Parkway to US 421 and KY 80 northwest of Hyden.

US 119 - From KY 15 at Whitesburg to US 23 at Jenkins.

US 119 - From US 25E south of Pineville to US 421 at Harlan.

US 119 - From US 23 at Pikeville to KY 1141 northeast of Pikeville.

KY 121 - From US 45 Bypass at Mayfield to US 51 in Wickliffe.

US 127 - From US 127 Bypass north of Danville to US 127 Bypass south of Lawrenceburg.

US 127 Bypass - From US 127 south of Danville to US 127 north of Danville.

US 127 Bypass - From US 127 south of Lawrenceburg to US 127 - KY 151 north of Lawrenceburg.

US 127 - From KY 22 in Owenton to KY 35 at Bromley.

KY 144 - From KY 448 south of Brandenburg to US 60.

US 150 - From US 31E at Bardstown to US 27 at north city limits of Stanford (via 150 Bypass Danville).

KY 151 - From US 127 near Lawrenceburg to I-64 near Graefenburg.

KY 180 - From I-64 Interchange near Cannonsburg to US 60 and KY 180 at Cannonsburg.

KY 192 - From I-75 south of London to Daniel Boone Parkway east of London.

KY 205 - From Mountain Parkway at Helechawa to US 460 west of Index.

KY 212 - From KY 20 to Greater Cincinnati Airport (Boone County).

KY 227 - From KY 355 near Worthville to KY 36 at Carrollton.

US 231 - From US 60 Bypass in Owensboro to Indiana state line.

US 231 - From I-65 south of Bowling Green to US 31W Bypass in Bowling Green.

KY 236 - From KY 212 near airport to US 25 at Erlanger.
KY 237 - From KY 18 east of Burlington to I-275 in Boone County.
KY 245 - From I-65 south of Shepherdsville to US 62 at Bardstown.
KY 255 - From US 31W at Park City to I-65.
KY 259 - From Western Kentucky Parkway to US 62 in Leitchfield.
KY 281 - From US 41A in Madisonville to US 41.
KY 341 - From US 421 near Midway to I-64 near Midway.
KY 348 - From Jackson Purchase Parkway west of Benton to US 641 in Benton.
KY 418 - From US 25 south of Lexington to I-75 south of Lexington.
US 421 - From US 119 north of Harlan to 0.1 mile south of Harlan Appalachian Regional Hospital.
US 421 & KY 80 - From Daniel Boone Parkway to 2nd Street in Manchester.
US 421 - From KY 4 in Lexington to KY 341 near Midway.
US 421 - From US 460 in Frankfort to Broadway at railroad bridge.
KY 425 - From US 60 at Henderson to the Pennyrile Parkway.
US 431 - From US 60 Bypass in Owensboro to US 60 (4th Street) in Owensboro.
KY 446 - From US 31W northwest of Bowling Green to I-65.
KY 448 - From KY 1051 at Brandenburg to KY 144.
US 460 - From I-64 north of Mt. Sterling to KY 686 north of Mt. Sterling.
US 460 - From Mountain Parkway Extension to US 23 near Paintsville.
KY 555 - From US 150 at Springfield to Bluegrass Parkway.
US 641 - From Tennessee state line to KY 348 in Benton.
KY 645 - From US 23 south of Ulysses to KY 40 west of Inez.
KY 676 - From US 127 in Frankfort to US 60.
KY 686 - From KY 11 south of Mt. Sterling to US 460 north of Mt. Sterling.
KY 841 - From KY 155 near Jeffersontown to US 42 northeast of Louisville.
KY 841 - From US 31W (Dixie Highway) in southwestern Jefferson County to I-65.
KY 859/KY 57 - From I-64 east of Lexington to Lexington - Bluegrass Army Depot.
KY 876 - From I-75 at Richmond to KY 52 east of Richmond.
KY 922 - From KY 4 in Lexington to junction of I-64 and I-75.
KY 1051 - From KY 448 south of Brandenburg to KY 79.
KY 1682 - From US 68 west of Hopkinsville to Pennyrile Parkway.
KY 1958 - From KY 627 south of Winchester to I-64 at Winchester.
KY 1998 - From US 27 at Cold Springs to KY 8 at Silver Grove.

(3) All dimensions specified in this section shall not be subject to any enforcement tolerances provided in any other section.
(4) Motor vehicles with the increased dimensions specified in subsection (1) of this section shall be allowed five (5) driving miles on state maintained highways from the Interstate and the designated route network for the purpose of attaining reasonable access to terminals; facilities for food, fuel, repairs and rest; and points of loading and unloading for household goods carriers.

O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: July 1, 1988
FILED WITH LRC: July 5, 1988 at 11 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 26, 1988 at 2 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 21, 1988 so notify: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, Tenth Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All operators of larger tractor trailer combinations in Jefferson County.
(a) Direct and indirect costs or savings to those affected: There will be savings as a result of allowing a more direct route for larger vehicles to use with the addition of another segment of KY 841 (Gene Snyder Freeway) to the IDTT.
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: The Gene Snyder Freeway was specifically designed to accommodate larger trailers.
(a) Direct and indirect costs or savings: None
1. First year: None
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: Since the Gene Snyder Freeway was designed for larger trailers, the only alternative of not including it in the IDTT was immediately 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: None
TIERING: Was tiering applied? Yes.

TRANSPORTATION CABINET
Department of Highways
(Proposed Amendment)

603 KAR 5:115. Coal-haul highway system; reporting requirements.

RELATES TO: KRS 42.455(8), 177.977, 177.9771
PURSUANT TO: KRS 42.455(8), 174.080, 177.977
NECESSITY AND FUNCTION: KRS 42.455 designates the Kentucky Transportation Cabinet as the

agency responsible for the identification of public highways, roads and streets that comprise the official coal-haul highway system. In addition, both KRS 42.455 and KRS 177.977 require the Transportation Cabinet to publish this [such] information in a directory on an annual basis. In order to discharge this responsibility, the cabinet must gather pertinent information from all coal shippers or owners regarding the movement of coal in Kentucky. This regulation specifies the procedures and intervals to be used in reporting this information to the Transportation Cabinet. In addition, KRS 177.9771 requires the coal road system transportation report to include coal by-products. Allowing the transportation of coal by-products to be reported to the Transportation Cabinet is necessary in order for the cabinet to prepare this report.

Section 1. Definitions. [The following are definitions as used in this regulation:]

(1) "Owner" means any individual, partnership, joint venture, association or corporation who owns the coal at the time of transport.

(2) "Interval" means a quarterly (three (3) months) reporting period.

(3) "Coal by-product" means any of the following: fly ash, bottom ash, wet bottom boiler slag, coal slag and coal cinders.

Section 2. Reporting Requirements. (1) On or before the 20th day of the month following the interval in which any coal is shipped over public highways, roads, or streets by or on behalf of any owner from a mine mouth or pit to a processing plant, tipple, loading dock, or customer, or from any of the foregoing locations to another of these [such] locations, the owner shall file a report on forms designated and furnished by the cabinet. This report is to be filed with the Kentucky Transportation Cabinet, Department of Highways, Division of Planning and contain information required by the cabinet relative to the ton miles of coal transported on the public highways, streets, and roads of each county in or through which coal was transported.

(2) The owner is responsible for obtaining and reporting the origin, the destination, the tons and approximate highway mileage on each route or road for all coal transported on public highways or streets when the coal is sold by a person or organization, such as a broker, or when the coal is transported by another individual or firm engaged in trucking coal for hire.

(3) An owner who is not engaged in the transportation of coal in any way shall [must] notify the cabinet of the precise nature of his operations in order that his address may be removed either temporarily or permanently from the mailing list of those firms to which forms are periodically sent. Likewise, owners who ship no coal during an interval shall inform the cabinet of that fact on or before the due date for that interval's report.

Section 3. Reconciliation of Data. The Division of Planning in the course of its normal duties may delete duplicate information, reconcile ambiguities, and correct errors prior to finalizing the report. To accomplish this the division may consider prior year reports and other relevant information concerning coal transportation routes in Kentucky. However, no [such] corrections may be made to the reported data after it is submitted to the Department for Local Government as required by KRS 42.455.

Section 4. Reporting of Coal By-products. Coal by-product transportation information may be reported to the Transportation Cabinet in the same manner as coal transportation information and on the forms designated and furnished by the cabinet. However, coal by-product information shall be reported separately from the information required on coal transportation. Across the top of the form the person reporting the shipment of coal by-product shall clearly type or mark in all capital letters "MATERIAL SHIPPED IS COAL BY-PRODUCT, NOT COAL."

O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: July 6, 1988
FILED WITH LRC: July 15, 1988 at 9 a.m.

PUBLIC HEARING: A public comment hearing will be held on this proposed administrative regulation on August 26, 1988 at 3 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 21, 1988 so notify: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

Only the new language is analyzed below.

(1) Type and number of entities affected: All highway transporters of coal by-products in Kentucky.

(a) Direct and indirect costs or savings to those affected: The indirect savings would result from submitting coal by-product transportation reports to the cabinet. If sufficient coal by-products are reported to have a new road segment placed on the extended weight coal and coal by-product haul road system, then the transportation cost of that by-product would be reduced the following year since it could be transported at extended weights. The cost should decrease by almost 50% since they will be allowed to transport more than 50% more coal by-product at a time.

1. First year: None

2. Continuing costs or savings: Savings in subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: If the transporter is using routes not already on the extended weight coal and coal by-product haul road system, he may choose to report that to the Transportation Cabinet. If he so chooses, then he must follow the requirements of this administrative regulation.

(2) Effects on the promulgating administrative body: None required as a result of this amendment.

(a) Direct and indirect costs or savings: The cost will be directly proportional to the number of persons filing reports of the transportation of coal by-products. At its worst, the cabinet would have to hire 3 more people and establish a separate computer system for the coal by-products. The cost of this would be $100,000. The roads over which the coal by-products will

be transported at extended weights will have additional maintenance needs. However, that is allowed by statute.

1. First year: $100,000

2. Continuing costs or savings: $80,000

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Review and analysis of all reports submitted and the publishing of a separate list of coal by-products.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Other definitions of coal by-product were considered before we decided to exclude those products from coal which were not the intended products from coal and waste products from power plants and coal preparation plants.

(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: House Bill 673 passed by the 1988 General Assemly expands the extended weight coal haul road system to include coal by-products.

TIERING: Was tiering applied? Yes.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 15:010. Accreditation of institutions.

RELATES TO: KRS [161.020,] 161.025, 161.030

PURSUANT TO: KRS 156.070, 161.030 [156.160]

NECESSITY AND FUNCTION: KRS 161.025 and 161.030 establish[es] a process for developing standards and procedures for the approval of college and university programs for the preparation of professional school personnel. This regulation establishes a procedure for evaluating the college and university programs in terms of the standards for teacher preparation as established by the Kentucky Council on Teacher Education and Certification and adopted by the State Board of Education.

Section 1. (1) All institutions of higher education offering curricula for the preparation of school personnel shall be regularly evaluated by the Superintendent of Public Instruction or his representatives to determine whether such institutions are meeting the requirements of law, the regulations of the State Board of Education, and standards recommended by the Kentucky Council on Teacher Education and Certification and adopted by the State Board of Education.

(2) An institution of higher education which meets the prescribed standards for teacher preparation as determined through the evaluation process shall be recommended by the Superintendent of Public Instruction for approval by the State Board of Education as a state accredited teacher education institution.

(3) For the evaluation of teacher education institutions the Superintendent of Public Instruction shall use the [standards of the] National Council for [the] Accreditation of Teacher Education Standards for the Accreditation of Professional Education Units, revised December, 1987, a copy of which can be obtained from the Office of Instruction, Department of Education, Capital Plaza Tower, Frankfort, Kentucky; and [of] the relevant portions of the Kentucky Standards [State Plan] for the [Approval of] Preparation-Certification [Programs for the Certification] of Professional School Personnel incorporated by reference in 704 KAR 20:005.

(4) The Superintendent of Public Instruction [Division of Teacher Education and Certification of the State Department of Education] shall be authorized to appoint an advisory committee or committees to assist in developing standards and criteria to be used in evaluating teacher education programs and to appoint committees to participate in the evaluation of teacher education programs.

(5) Teacher education institutions offering approved programs for certification at the graduate level shall be accredited for graduate study by the regional accrediting association as well as by the State Board of Education.

DR. JOHN BROCK, Superintendent

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer

(1) Type and number of entities affected: 25 institutions of higher education in Kentucky.

(a) Direct and indirect costs or savings to those affected: No additional costs or savings.

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: All Kentucky teacher preparation programs will be required to provide documentation and other evidence that they meet the national accreditation standards.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Review, approval, and monitoring of programs in accredited institutions.

(3) Assessment of anticipated effect on state

and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: There is only one national accreditation body in teacher education, and therefore only one set of accrediting standards 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. Standards must be applied uniformly to all teacher preparation institutions in Kentucky.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:005. Kentucky standards for preparation-certification of professional school personnel program approval.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.025 gives the Kentucky Council on Teacher Education and Certification the duty to develop and recommend policies and standards relating to teacher preparation and certification; and KRS 161.030 rests the certification of teachers and other school personnel and the approval of teacher-preparatory colleges and universities and their curricula with the State Board of Education. This regulation establishes the standards and procedures which are to be used for the approval of the various teacher preparation programs offered by the colleges and universities, and where applicable, these curriculum standards are consistent with the Program of Studies as incorporated in 704 KAR 3:304; and this regulation also establishes procedures and necessary justifications for future development of new preparation-certification programs.

Section 1. Pursuant to the statutory authority placed upon the Superintendent of Public Instruction, the State Board of Education, and the Kentucky Council on Teacher Education and Certification under KRS Chapter 161, there is hereby devised, created, and incorporated by reference the Kentucky Standards for the Preparation-Certification of Professional School Personnel, which shall include the standards and procedures for the approval of college and university curricula for the preparation programs.

Section 2. The Kentucky Standards for the Preparation-Certification of Professional School Personnel are hereby amended, and the amended document is hereby incorporated by reference and identified as the Kentucky Standards for the Preparation-Certification of Professional School Personnel, revised July [March], 1988. A copy of this document can be obtained from the Office of Instruction, Department of Education, Capital Plaza Tower, Frankfort, Kentucky.

Section 3. Any proposal for the development by the Council on Teacher Education and certification of a program of preparation-certification for a new position shall be evaluated in writing by the office of the Superintendent of Public Instruction on the basis of the following criteria:
(1) There are compelling reasons for establishing a preparation-certification program. Alternate procedures for insuring professional competence for the position are either not feasible or are not appropriate. The likelihood of unsatisfactory practices represents too high a risk for noncertification alternatives.
(2) A distinctive and specific body of knowledge exists for the new position which is not likely to be attained without a specific preparation-certification plan. The body of knowledge is sufficiently extensive for a program of preparation - twelve (12) semester hours of credit or more - rather than something that can be earned in miscellaneous noncredit experiences.
(3) There are pupils having unique characteristics which require the teacher to have specialized knowledge and skills or there is a need for special services for which unique professional preparation is required.
(4) There is a sufficient demand for the training for this position to warrant the development of preparation-certification programs at one (1) or more Kentucky teacher education institutions and for sustaining these programs over a period of several years.
(5) The preparation-certification requirement is cost effective in terms of the anticipated benefits to the local school district.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer
(1) Type and number of entities affected: Approximately 1,200 additional individuals per annum receiving teacher certification and 25 institutions of higher education in Kentucky.
(a) Direct and indirect costs or savings to those affected: No additional costs or savings.
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: Kentucky teacher preparation institutions will be required to submit where appropriate, revised preparation programs to meet new standards.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Review, approval, and maintenance of records on revised programs.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Preparation program standards revised to meet the evolving professional requirements in education.
(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. Professional preparation standards must be applied uniformly to all approved preparing institutions and individuals who are completing the preparation for specific categories of certification.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:015. Rank I classification.

RELATES TO: KRS 157.390
PURSUANT TO: KRS 156.070, 157.390
NECESSITY AND FUNCTION: KRS 157.390 authorizes the State Board of Education to adopt regulations to determine the salary ranks of certified teachers and to determine equivalent qualifications for the salary ranks. This regulation defines approved graduate work for the Rank I classification and defines an equivalent program for Rank I.

Section 1. [(1)] Effective until June 30, 1989, the preparation program for a Rank I classification shall be planned as outlined in 704 KAR 20:010 and shall require the completion of either:
(1) [(a)] Plan I. Thirty (30) semester hours approved graduate level credit or approved equivalent in addition to the requirements for a Rank II classification, or
(2) [(b)] Plan II. Sixty (60) semester hours approved graduate level credit or approved equivalent including a master's degree.
[(2) The equivalent preparation shall be approved by the Superintendent of Public Instruction on the basis of the following criteria:]
[(a) Approved equivalent credit shall be offered in the form of teacher institutes designed for the purpose of upgrading classroom teaching personnel in their teaching specialties.]
[(b) The teacher institutes shall be offered only by the institutions that are approved by the State Board of Education for offering Rank I programs. Teacher education institutions shall make application for the advanced approval of teacher institutes on forms provided by the Superintendent of Public Instruction.]
[(c) Operation of the teacher institutes shall meet the standards for the accreditation of teacher preparation programs.]
[(d) Equivalency credit toward a Rank I classification may be earned only by professional personnel who have already attained a Rank II classification.]
[(e) Equivalency credit toward a Rank I classification shall be limited to a maximum of fifteen (15) semester hours of the requirements for Rank I. Equivalency credit shall be the amount of contact time required for graduate credit at the teacher education institution.]
[(f) Approved equivalency credit shall be an integrated part of an individualized Rank I program as planned with a graduate curriculum adviser. Approved equivalency credit earned through approved teacher institutes may be applied for teacher certification purposes as described in 704 KAR 20:030.]
[(3) The appropriate official designated by the teacher education institution shall certify to the State Department of Education when the curriculum requirements have been completed for the Rank I program at the institution.]
[(4) Of the thirty (30) semester hour program, at least fifteen (15) semester hours shall be taken at the college making the recommendation. The remaining fifteen (15) semester hours credit may be taken at the same institution or, upon approval of the college adviser, at other institutions.]

Section 2. Effective July 1, 1989, the preparation program for a Rank I classification under the Foundation Law shall require the completion of the following:
(1) Documentation that the preparation program was planned in advance as required in 704 KAR 20:010.
(2) Completion of the requirements for a Rank II classification as identified in 704 KAR 20:020.
(3) The completion of one (1) of the plans as described in this subsection:
(a) Plan I. Thirty (30) semester hours of approved graduate level credit or approved equivalent in addition to the requirements for a Rank II classification; or
(b) Plan II. Sixty (60) semester hours approved graduate level credit or approved equivalent including a master's degree and the requirements for a Rank II classification.

Section 3. The equivalent preparation shall be approved by the Superintendent of Public Instruction on the basis of the following criteria:
(1) Approved equivalent credit shall be offered in the form of teacher institutes designed for the purpose of upgrading classroom teaching personnel in their teaching specialties.
(2) The teacher institutes shall be offered only by the institutions that are approved by the State Board of Education for offering Rank I

programs. Teacher education institutions shall make application for the advanced approval of teacher institutes on forms provided by the Superintendent of Public Instruction.

(3) Operation of the teacher institutes shall meet the standards for accreditation of teacher preparation programs.

(4) Equivalency credit toward a Rank I classification may be earned only by professional personnel who have already attained a Rank II classification.

(5) Equivalency credit toward a Rank I classification shall be limited to a maximum of fifteen (15) semester hours of the requirements for Rank I. Equivalency credit shall be the amount of contact time required for graduate credit at the teacher education institution.

(6) Approved equivalency credit shall be an integrated part of an individualized Rank I program as planned with a graduate curriculum adviser. Approved equivalency credit earned through approved teacher institutes may be applied for teacher certification purposes as described in 704 KAR 20:030.

Section 4. The appropriate official designated by the teacher education institution shall certify to the State Department of Education when the curriculum requirements have been completed for the Rank I program at the institution.

Section 5. Of the thirty (30) semester hour program, at least fifteen (15) semester hours shall be taken at the college making the recommendation. The remaining fifteen (15) semester hours credit may be taken at the same institution or, upon approval of the college adviser, at other institutions.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer
(1) Type and number of entities affected: Approximately 1,000 individuals each year.
(a) Direct and indirect costs or savings to those affected:
1. First year: No additional cost.
2. Continuing costs or savings: No additional costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: no additional requirement.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment adds cohesion and relevance to Rank I requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:020. Fifth-year program for renewal of provisional teaching certification and for Rank II equivalency.

RELATES TO: KRS 157.390, 161.030
PURSUANT TO: KRS 156.070, 157.390, 161.030
NECESSITY AND FUNCTION: KRS 157.390 authorizes the State Board of Education to adopt regulations to determine the salary ranks of certified teachers and to determine equivalent qualifications for the salary ranks; and KRS 161.030 vests authority for the issuance and renewal of certification for all school personnel in the State Board of Education. This regulation defines an equivalency for the Rank II salary classification and the fifth-year program acceptable for provisional certificate renewal.

Section 1. The preparation program [Planned Fifth Year Program] required for the renewal of provisional teaching certificates and for a Rank II classification under the Foundation Law shall be planned as outlined in 704 KAR 20:010 and shall require completion of [be accepted as an equivalency for a Rank II classification under the Foundation Law and may be satisfied by any] one (1) of the [three (3)] plans as described in the following sections.

Section 2. The Plan I Fifth Year Program shall be the completion of a master's degree leading to a standard teaching certificate from a regionally accredited college or university or from any foreign institution recognized by its government for teacher education purposes.

Section 3. The Plan II Fifth-Year Program shall be the completion of a master's degree in a professional education specialty from a regionally accredited college or university or from a foreign institution recognized by its government for teacher education purposes.

Section 4. The Plan III Fifth-Year program shall be the completion of a master's degree in an academic subject identified in the teacher

certification requirements as a teaching field from a regionally accredited college or university or from a foreign institution recognized by its government for teacher education purposes.

Section 5. [3.] The Plan IV [II] Fifth Year Program shall consist of a program completed in accordance with the following guidelines:

(1) The Plan IV [II] Fifth Year Program shall be planned individually with each applicant by the teacher education institution which shall be an institution approved for offering programs leading to the standard teaching certificates.

(2) The Plan IV [II] Fifth Year Program shall consist of thirty-two (32) semester hours of credit earned above and beyond the bachelor's degree and the four (4) year program of preparation required for a provisional certificate, except that persons who complete a mandated dual certification program shall be allowed to count toward the Plan IV [II] Fifth Year Program those credits in the second certification area which are beyond those required for a bachelor's degree and certification in the first area. The academic standing for the thirty-two (32) semester hour program shall be no less than is required at the planning institution for the teacher education graduates and of the total program at least eighteen (18) semester hours must be earned at the planning institution; at least twelve (12) semester hours shall be graduate level course work; at least twelve (12) semester hours shall be professional education; and at least twelve (12) semester hours shall be from the area of the teacher's specialization.

(3) Once the Plan IV [II] Fifth Year Program has been planned with the individual, the planning institution may authorize in advance the completion of a maximum of six (6) semester hours of the program at a senior college.

(4) Course work earned by the applicant prior to planning the fifth year program may be evaluated for acceptance by the planning institution.

(5) Credit earned by correspondence shall not apply toward the Plan IV [II] Fifth Year Program.

Section 6. [4.] (1) The Plan V [III] Fifth Year Program shall follow the same guidelines as for the Plan IV [II] Fifth Year Program described in Section 5 [3] of this regulation except for the modifications described and permitted in this section.

(2) The Plan V [III] Fifth Year Program shall include at least thirty-two (32) semester hours of credit, except that continuing education units and/or professional staff development units may be substituted under an equivalent formula for up to twelve (12) semester hours of the total program. Among the college credits there shall be included at least twelve (12) semester hours in professional education and six (6) semester hours from the area of the teacher's specialization. Furthermore, at least eighteen (18) semester hours of credit must be earned at the planning institution and twelve (12) semester hours of the total program must be for graduate level credit.

(3) The Plan V [III] Fifth Year Program shall be planned by the teacher education institution individually with each applicant in terms of the position held by the applicant or in terms of a position anticipated by the applicant. Standard college credits earned by the applicant prior to planning the program shall be evaluated for possible acceptance by the planning institution; however, all preparation recorded as continuing education units or as professional staff development units must be included as a component of applicant's planned program as approved in advance for acceptance as a part of the Plan V [III] Fifth Year Program. The grade point standing for the college credit portion of the Plan V [III] Fifth Year Program shall be no less than that required at the planning institution for teacher education graduates. Once the Plan V [III] Fifth Year Program has been planned with the individual, the planning institution may authorize in advance the completion of a maximum of six (6) semester hours of the program at a senior college. Credit earned by correspondence shall not apply toward the Plan V [III] Fifth Year Program.

(4) The continuing education unit as used in the Plan V [III] Fifth Year Program shall be the continuing education unit now in use by accredited colleges and universities and defined as ten (10) contact clock hours of participation in an organized professional experience under responsible sponsorship, capable direction, and qualified instruction. For purposes of the Plan V [III] Fifth Year Program the studies and experiences for continuing education units shall be planned in advance to insure relevance to the total program being planned with the applicant. For purposes of the Plan V [III] Fifth Year Program two (2) continuing education units shall be applied on the same basis as one (1) semester hour of college credit.

(5) The professional staff development unit as used in the Plan V [III] Fifth Year Program shall be awarded for participation in short term workshops organized by the local school district or by the State Department of Education and shall require a minimum of ten (10) contact clock hours of participation for each unit. For purposes of the Plan V [III] Fifth Year Program two (2) professional staff development units shall be applied on the same basis as one (1) semester hour of college credit. For this purpose the local district in-service education committee established under 704 KAR 3:035 shall approve in advance the local district workshops that are to be offered for professional staff development units on the basis of the following criteria:

(a) There is an assessment of educational need based upon input from the persons who are to be participants in the workshop activity.

(b) There is a statement of objectives relating to the assessment.

(c) The workshop activities and the study materials are appropriate to the attainment of the objectives. Participants have input into the design of the workshop.

(d) The instructor[(s)] has appropriate expertise for the nature of the workshop.

(e) Appropriate records will be prepared using forms authorized by the State Department of Education; each participant will be given an individual record of PSDU's granted.

(6) The Superintendent of Public Instruction shall monitor and evaluate the effectiveness of the Plan V [III] Fifth Year Program and report annually by September 1 his evaluation of program effectiveness to the State Board of Education. For this purpose local school districts and teacher education institutions

shall provide pertinent information in such form as he may require.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer
(1) Type and number of entities affected: Approximately 200 individuals each year.
(a) Direct and indirect costs or savings to those affected:
1. First year: No additional costs or savings.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No additional requirements.
(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: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 157.390 requires State Board of Education regulations to classify school personnel in ranks for foundation funding purposes and to define equivalent preparation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:025. Ranking of vocational trade instructors.

RELATES TO: KRS 157.390
PURSUANT TO: KRS 156.070, 157.390
NECESSITY AND FUNCTION: KRS 157.390 authorizes the State Board of Education to determine equivalent qualifications for the salary ranks and directs that consideration be given to the apprenticeship and work experience of certain vocational teachers. This regulation defines equivalency for Rank III, Rank II, and Rank I classifications taking into account the factors of apprenticeship and work experience.

Section 1. (1) Equivalent ranking qualifications for vocational industrial education instructors, as provided for in KRS 157.390, shall be limited to those persons who are serving in positions identified as vocational education - industrial education level III, health and personal services, or vocational technical education and who hold one (1) of the certificates identified in Section 3(2)(c) and Section (4)(2)(c) of this regulation.
(2) Vocational industrial education instructors identified in subsection (1) of this section who achieve certification as principal, supervisor or coordinator of vocational education may retain the same rank, or advance to a higher rank earned on the basis of the provisions of this regulation.

Section 2. [1. For] A Rank III classification under the foundation law for a vocational [industrial] education instructor identified in Section 1 of this regulation shall require the following: [hold]
(1) A [regular] certificate for Vocational Education - Industrial Education, [to teach a specific trade based on]
(2) High school graduation or evidence of completion of a GED Test. [equivalent plus]
(3) Four (4) years of trade experience as a recognized journeyman beyond the learners level in the trade to be taught. [In the absence of a high school diploma, equivalency of high school graduation shall be determined by submitting evidence of an acceptable score on a GED Test administered by an approved testing center.]

Section 3. [2. (1) Effective until September 15, 1981, for a Rank II classification a vocational industrial education instructor shall have completed thirty-two (32) semester hours of approved courses and shall hold either the certificate for Trade and Industrial Education or the certificate for Vocational Education - Industrial Education, Ten (10) Year Certificate.]
(1) [(2)] Effective until June 30, 1989 [from September 15, 1981,] for a Rank II classification under the foundation law, a vocational industrial education instructor shall have at least sixty-four (64) semester hours of approved college credit, at least two (2) years of approved vocational industrial education teaching experience, and shall hold one (1) of the following:
(a) Certificate for Vocational Education - Industrial Education, Ten (10) Year Certificate;
(b) Certificate for Vocational Education - Industrial Education, Five (5) Year Certificate;
(c) Any certificate valid for high school Industrial Education - Preparation Level; or
(d) Certificate for Trades and Industrial Education.
(2) Effective July 1, 1989, a Rank II classification for a vocational education instructor identified in Section 1 of this regulation shall require the following:
(a) Sixty-four (64) semester hours of approved college credit.

(b) Three (3) years of teaching experience identified as vocational education - industrial education level III, health and personal services, or vocational technical education. The experience shall be further defined as follows:

1. A full year of experience shall include at least 140 days of employment performed within the academic year.

2. A half year of experience shall include at least seventy (70) days of employment performed within an academic semester.

(c) One of the following certificates:

1. Certificate for Vocational Education - Industrial Education, Ten (10) Year Certificate;

2. Certificate for Vocational Education - Industrial Education, Five (5) Year Certificate;

3. Any high school certification with an area of concentration in vocational industrial and technical education (certification code A77) or industrial education - preparation level (certification code A96).

4. Certificate for Trades and Industrial Education.

Section 4. [3.] (1) Effective until June 30, 1989, [from September 15, 1981,] for a Rank I classification under the foundation law, a vocational industrial education instructor shall have at least a bachelor's degree, at least four (4) years of approved vocational industrial education teaching experience, and shall hold one (1) of the following:

(a) [(1)] Certificate for Vocational Education - Industrial Education, Ten (10) Year Certificate;

(b) [(2)] Certificate for Vocational Education - Industrial Education, Five (5) Year Certificate;

(c) [(3)] Any certificate valid for high school Industrial Education - Preparation Level; or

(d) [(4)] Certificate for Trades and Industrial Education.

(2) Effective July 1, 1989, a Rank I classification for a vocational education instructor identified in Section 1 of this regulation shall require the following:

(a) An approved bachelor's degree from a regionally accredited institution defined as follows:

1. A bachelor's degree in technical education, industrial education, health occupations, personal services occupation or which has been planned with a teacher education institution and is specifically related to the occupation to be taught.

2. A bachelor's degree leading to a provisional high school certificate with an area of concentration identified in paragraph (c)3 of this subsection.

(b) Six (6) years of teaching experience identified as vocational education - industrial education level III, health and personal services, or vocational technical education. The experience shall be further defined as follows:

1. A full year of experience shall include at least 140 days of employment performed within the academic year.

2. A half year of experience shall include at seventy (70) days of employment performed within an academic semester.

(c) One of the following certificates:

1. Certificate for Vocational Education - Industrial Education, Ten (10) Year Certificate;

2. Certificate for Vocational Education - Industrial Education, Five (5) Year Certificate;

3. Any high school certification with an area of concentration in vocational industrial and technical education (certification code A77) or industrial education - preparation level (certification code A96).

4. Certificate for Trades and Industrial Education.

DR. JOHN BROCK, Superintendent

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer

(1) Type and number of entities affected: Approximately 100 vocational trade instructors each year and employing agencies.

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

1. First year: Increase in the number of years of teaching experience will slow down the pace at which Rank I and Rank II are achieved by individuals and thus may result in savings to employing agencies.

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: Application with verification of experience and college credit will need to be filed with KDE For rank change.

(2) Effects on the promulgating administrative body: Processing of application and approval of rank change.

(a) Direct and indirect costs or savings: Administrative and recordkeeping costs approximately $5,000 per annum.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Processing issuance, and maintenance of rank change records.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 157.390 provides for equivalency ranking of vocational trade instructors which allows consideration of apprenticeship training and industrial experience in lieu of academic college training.

(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 Instruction
(Proposed Amendment)

704 KAR 20:120. Emergency certification.

RELATES TO: KRS 161.020, 161,030, 161.100
PURSUANT TO: KRS 156.070, 161.030, 161.100
NECESSITY AND FUNCTION: KRS 161.100 provides for the employment of school personnel in the event that regularly qualified persons are not available for specific positions. This regulation establishes the qualifications and procedures by which the local boards of education and the State Board of Education may comply with the statute.

Section 1. (1) In order to comply with KRS 161.100 in establishing the need for employing emergency teaching personnel, the superintendent of the local school district and the board of education shall make the following declaration to the Superintendent of Public Instruction on request forms supplied by his office:

(a) No qualified teachers have applied for the vacant position and to our knowledge qualified teachers are not available for the position.

(b) Diligent efforts have been made to recruit a qualified teacher for the vacant position, and furthermore, this vacancy has been made known locally by appropriate means.

(c) The local school district has been unsuccessful in recruiting teachers for the vacant position either from the listings of teachers supplied by the State Department of Education or by means of the placement services of the teacher education institutions.

(d) The position will be filled by the best qualified person available, giving preference to the factors of academic preparation, prior teaching experience or related educational work, and personal attributes compatible with the demands of the teaching profession. Effective with the 1988-89 academic year, an emergency certificate for full-time or part-time employment shall be issued only to individuals who have attained a bachelor's degree.

(2)(a) The Superintendent of Public Instruction, depending upon his assessment of the need for the position and the availability or anticipated availability of qualified personnel, shall approve or disapprove a request for the employment of emergency teaching personnel. The term of validity of an emergency certificate may be limited to a period less than the full school year; the beginning date shall be no earlier than the date the request form is received in the Department of Education.

(b) Individuals, for whom application for a full-time emergency certificate is being made by a local school district for a second or any subsequent year shall show evidence of progress towards regular certification by having enrolled in and earned a minimum of six (6) hours of credit from the preparation program leading to the required certification for the position. This required credit shall be earned subsequent to the issuance of the initial or any subsequent full-time emergency certificate and prior to the issuance of next succeeding full-time emergency certificate, until the applicable preparation program has been completed.

(3) Effective with the 1988-89 academic year, emergency certification for an assignment as teacher of exceptional children shall be issued with the condition that the applicant shall receive intensive training on special education topics, such as IEP, assessment, evaluation, individualized instruction, methods, and management. This training shall be accomplished as follows:

(a) The applicant shall participate in a two (2) day workshop to be conducted by the Office of Education for Exceptional Children. This workshop shall be conducted during a weekend period, arranged on a regional basis, and offered a minimum of two (2) times during each school year. Participation shall be required at the earliest session scheduled following employment.

(b) The applicant shall participate in an additional two (2) day workshop to be conducted by the Office of Education for Exceptional Children in conjunction with the OEEC fall conference. Teachers employed after the fall conference shall participate in the spring conference of the Council on Exceptional Children.

(c) The applicant shall participate in at least one (1) day of flexible in-service training, relevant specifically to special education. Such training shall be limited to visitation in a classroom of an exemplary special education teacher, special education training relevant to the identified needs of the teacher, or other training provided by the Office of Education for Exceptional Children.

(4) [(3)](a) The superintendent of the local school district and the board of education may establish the need for emergency teaching personnel, restricted to substitute teaching only, on the basis of anticipated shortages of regularly certified teachers. Emergency certificates may then be issued by the Superintendent of Public Instruction restricted to substitute teaching only and subject to the priority schedule for the employment of substitute teachers as established by 704 KAR 20:210. Emergency certificates for substitute teaching shall not be issued to applicants having less than sixty-four (64) semester hours of credit, except that the Superintendent of Public Instruction may grant approval for applicants having at least thirty-two (32) semester hours of credit or more whenever the need for such personnel is appropriately documented by the local school district superintendent and board of education using application forms provided by the Department of Education.

(b) Each local school district that employs emergency substitute teachers shall report by June 30 of each year on forms provided by the Superintendent of Public Instruction the number of days of substitute teaching performed by each emergency teacher.

(5) [(4)] The Superintendent of Public Instruction shall periodically report to the State Board of Education the numbers of emergency certificates issued for full-time, part-time, and substitute teaching by school district, by position, and by academic preparation.

(6)(a) A minimum grade point average of 2.5 on

a 4.0 scale shall be required for the issuance of an emergency certificate for employment in a full-time or part-time teaching position, effective with the 1988-89 academic year.

(6) [(5)] A minimum grade point average of 2.0 on a 4.0 scale shall be required for the issuance of an [any] emergency certificate [whether] for employment in a [full-time, part-time, or] substitute teaching position.

(7) [(6)] An application form signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated emergency position. The application shall be accompanied by official transcripts of all college credits earned by the prospective emergency teacher.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer
(1) Type and number of entities affected: Approximately 150 full-time and part-time emergency certified individuals.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Application with required documentation.
(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: Issuance of certification and recordkeeping.
(3) Assessment of anticipated effect on state and local revenues: Cost of providing training, transportation, and lodging to participants approximately $20,000.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Emergency certification is the alternative to regular full certification.
(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. Tiering applied with respect to emergency substitutes' required credit hours; remainder of requirements uniform since emergency certification already lesser standard than regular certification.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:145. School media librarians, provisional certificate.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes an appropriate certificate and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) The provisional certificate for school media librarian shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005, TEC 71.0 and 73.0.

[(2) Effective until December 31, 1984, the provisional certificate for school media librarian shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth-year program. The certificate may be extended for life upon completion of three (3) years of successful experience as a media librarian and upon completion of the planned fifth-year program.]

(2) [(3) Effective January 1, 1985,] The provisional certificate for school media librarian shall be issued and renewed in accordance with the provisions of KSRS 161.030 and 704 KAR 20:045.

(3) [(4)] The provisional certificate for school media librarian shall be valid for serving as media librarian in grades kindergarten through grade twelve (12).

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer
(1) Type and number of entities affected: Approximately 15 individuals annually.
(a) Direct and indirect costs or savings to those affected: No additional costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional 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: Specific training and certification of school media librarians required to ensure individuals serving in these positions possess the required specialized competencies.
(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. Certification is issued to all individuals who meet the prescribed preparation standards.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:146. School media librarians, endorsement [teaching certificate for].

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030 [156.160]
NECESSITY AND FUNCTION: In accordance with KRS 161.020, KRS 161.025, and KRS 161.030, teachers and other professional school personnel must hold certificates of legal qualifications for their respective positions. This regulation establishes the means by which the validity of classroom teaching certificates may be extended for the function of school media librarian.

Section 1. (1) A certificate that is valid for classroom teaching at the elementary school level, grades 1-8, K-4, or 5-8, may be endorsed for the position of elementary school media librarian, grades K-8, upon completion of the following:
(a) [(1)] An approved twenty-four (24) semester hour [curriculum covering the] specialization component for school media librarian to include the competencies in TEC 71.0. [;]
(b) A supervised practicum of three (3) weeks in an elementary school library media center. An alternative plan for meeting this requirement shall be developed for applicants who have successfully completed at least one (1) year as a full-time teacher or school librarian. The alternative plans shall be designed to enable candidates to gain practical experience in appropriate work settings, and to demonstrate the competencies outlined in TEC 71.0, Section 3. Such plans shall require the approval of the Division of Teacher Education and Certification.
(2) A certificate valid for the position of elementary school media librarian may be further endorsed for the position of secondary media librarian, grades 9-12, upon completion of the following: [Supervised practice in a media center as set forth in the State Plan for the Approval of Preparation Programs as described in 704 KAR 20:005, TEC 12 - three (3) semester hours credit.]
(a) Three (3) additional hours in planning and implementing appropriate instructional programs at the secondary level.
(b) A supervised practicum of three (3) weeks in a secondary school library media center. An alternative plan for meeting this requirement shall be developed for applicants who have successfully completed at least one (1) year as a full-time teacher or school librarian. The alternative plans shall be designed to enable candidates to gain practical experience in appropriate work settings, and to demonstrate the competencies outlined in TEC 71.0, Section 3. Such plans shall require the approval of the Division of Teacher Education and Certification.

Section 2. (1) A certificate that is valid for classroom teaching in the middle grades, 5-8, or at the secondary [high school] level, grades 7-12 or 9-12, may be endorsed for the position of [high] school media librarian for grades 5-12 upon completion of the following:
(a) [(1)] An approved twenty-four (24) semester hour [curriculum covering the] specialization component for school media librarian to include the competencies in TEC 71.0. [;]
(b) One (1) course in the teaching of reading.
(c) A supervised practicum of three (3) weeks in an secondary school library media center. An alternative plan for meeting the requirement shall be developed for applicants who have successfully completed at least one (1) year as a full-time teacher or school librarian. The alternative plans shall be designed to enable candidates to gain practical experience in appropriate work settings, and to demonstrate the competencies outlined in TEC 71.0, Section 3. Such plans shall require the approval of the

Division of Teacher Education and Certification.

(2) A certificate valid for the position of secondary school media librarian may be further endorsed for the position of elementary school media librarian, grades K-8, upon completion of the following: [Supervised practice in a media center as set forth in the State Plan for the Approval of Preparation Programs as described in 704 KAR 20:005, TEC 12 - three (3) semester hours credit;]

(a) Three (3) additional hours in planning and implementing appropriate instructional programs at the elementary level.

(b) A supervised practicum of three (3) weeks in a elementary school library media center. An alternative plan for meeting this requirement shall be developed for applicants who have successfully completed at least one (1) year as a full-time teacher or school librarian. The alternative plans shall be designed to enable candidates to gain practical experience in appropriate work settings, and to demonstrate the competencies outlined in TEC 71.0, Section 3. Such plans shall require the approval of the Division of Teacher Education and Certification.

[(3) One (1) course in the teaching of reading.]

DR. JOHN BROCK, Superintendent

APPROVED BY AGENCY: July 13, 1988

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PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer

(1) Type and number of entities affected: Approximately 20 individuals annually.

(a) Direct and indirect costs or savings to those affected: No additional costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional 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: Teachers serving in school media librarian positions require specialized training and competencies.

(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 Instruction
(Proposed Amendment)

704 KAR 20:150. School media librarians, standard certificate [specialists].

RELATES TO: KRS 161.020, 161.025, 161.030

PURSUANT TO: KRS 156.070, 161.030

NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes an appropriate certificate and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) The standard certificate for school media librarian [specialist] shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005, TEC 72.0.

[(2) Effective until December 31, 1984, the standard certificate for school media specialist shall be issued initially for a duration period of ten (10) years except that when the curriculum requirements were completed more than ten (10) years prior to the date of certificate issuance the provisions of 704 KAR 20:050, Section 2, shall apply. The certificate shall be extended for life upon three (3) years of successful experience as a school media librarian or as a school media specialist completed prior to the expiration of the certificate. If the holder fails to meet the requirements for life extension by the end of the ten (10) year period, the certificate may be renewed for another ten (10) year period on the basis of two (2) years of experience as a school media librarian or as a school media specialist or on the basis of four (4) semester hours of additional graduate credit for each of the years

of required experience.]

(2) [(3) Effective January 1, 1985,] The standard certificate for school media librarian [specialist] shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045.

(3) [(4)] The standard certificate for school media librarian [specialist may be endorsed to include the qualifications for school media librarian and] shall be valid for the same grade levels [serving] as the provisional certificate for [a] school media librarian or the endorsement for [as a] school media librarian [specialist].

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer

(1) Type and number of entities affected: Approximately 5 individuals annually and 6 institutions of higher education.

(a) Direct and indirect costs or savings to those affected: No additional costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional 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: Specific training and certification of school media librarians required to ensure individuals serving in these positions possess the required specialized competencies.

(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: Change the name of the Standard Certificate for School Media Specialist to Standard Certificate for School Media Librarian.

TIERING: Was tiering applied? No. Certification is issued to all individuals who meet the prescribed preparation standards.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:240. Speech and communication disorders; teacher's provisional certificate.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030

NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes an appropriate certificate and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) Effective until August 1, 1994, the provisional certificate for teachers of exceptional children - speech and communication disorders shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005, TEC 62.0.

[(2) Effective until December 31, 1984, the provisional certificate for teachers of exceptional children - speech and communication disorders shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth-year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of a planned fifth-year program.]

(2) [(3) Effective January 1, 1985,] The provisional certificate for teachers of exceptional children - speech and communication disorders shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045, except that the certificate shall be issued for a five (5) year duration period or until August 1, 1994, whichever comes first, provided the applicant is pursuing a program of study which will result in obtaining a master's degree in speech-language pathology.

The renewal thereafter, unless any one (1) year extension for extraordinary circumstances has been granted by the Board of Speech-Language Pathology and Audiology, shall require completion of a masters degree in speech language pathology by September 1 of the year of expiration.

(3) [(4)] The provisional certificate for teachers of exceptional children - speech and communication disorders shall be valid at any grade level for the instruction of exceptional children with speech and communication disorders.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer
(1) Type and number of entities affected: Approximately 50 individuals per year until 1994.
(a) Direct and indirect costs or savings to those affected:
1. First year: Additional tuition costs for approximately 30 semester hours graduate level academic preparation.
2. Continuing costs or savings: Same as above until 1994.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Initial application for certification will need to include evidence of enrollment in a master's program in speech pathology.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: (Records on certified speech pathologists enrolled in master's programs will have to be maintained.)
(3) Assessment of anticipated effect on state and local revenues: Speech pathologist will advance to higher salary rank by 1994.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Provisions in regulation required by KRS Chapter 334A.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Brings current regulations in conformity with KRS Chapter 334A.
(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:
TIERING: Was tiering applied? Yes.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:460. Examination prerequisites for principal certification.

RELATES TO: KRS 161.020, 161.027, 161.030
PURSUANT TO: KRS 156.070, 161.027
NECESSITY AND FUNCTION: KRS 161.020 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires the State Board of Education to develop or select appropriate tests, establish minimum scores for successful completion, and establish a reasonable fee to be charged for actual cost of administration of the tests, for applicants seeking certification as principal, and further requires that effective July 1, 1988, all applicants for certification as school principal with less than two (2) years of appropriate experience complete a one (1) year internship program developed by the State Board of Education; and KRS 161.030 rests certification with the State Board of Education. This regulation specifies the prerequisite tests, minimum scores for successful completion, and establishes a reasonable fee for administration of the prerequisite tests for certification as principal required under KRS 161.027.

Section 1. (1) All new applicants for certification as a school principal, including vocational school principal, shall successfully complete prerequisite tests specified in Section 2 of this regulation prior to certification as a school principal.
(2) [Beginning July 1, 1988,] All applicants for certification shall be required to successfully complete both the prerequisite examination specified in Section 2 of this regulation and a one (1) year internship program.

Section 2. In order to satisfy the prerequisites for principal certification, each applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:
(1) NTE Core Battery Tests.
(a) Communication skills: 643.
(b) General knowledge: 637.
(2) NTE Specialty Test of Educational Administration and Supervision: 540.
(3) Kentucky Specialty Test of Instructional and Administrative Practices. Eighty-five (85) percent correct responses [(A minimum score will not be required prior to July 1, 1988. The State Board of Education shall establish the minimum passing score which will be required beginning July 1, 1988.)]

Section 3. Initial applicants for principal certification who have within the four (4) years immediately preceding the date of application attained the minimum score required by this regulation on the NTE Core Battery for communication skills or general knowledge or for the NTE Specialty Test of Educational

Administration and Supervision may meet requirements for such test(s) by:

(1) Having scores previously recorded at the Kentucky Department of Education for other professional certifications; or

(2) Having the Educational Testing Service (ETS) furnish score reports to the Kentucky Department of Education. Requests for such score reports must comply with all policies and procedures of the ETS.

Section 4. (1) Applicants for certification as principal may take the required NTE tests on any of the dates established by the ETS. Applicants must authorize that test results be forwarded to the Kentucky Department of Education by the ETS.

(2) Applicants for certification as principal may take the Kentucky Specialty Test of Instructional and Administrative Practices on any of the dates established by the Kentucky Department of Education. Scoring and reporting of scores shall be the responsibility of the Kentucky Department of Education or its designated agent.

(3) Public announcement of testing dates and locations shall be issued sufficiently in advance to permit registration as required by the ETS and the Kentucky Department of Education.

(4) It shall be the responsibility of each applicant to seek information regarding the dates and location of the tests and to make application for the appropriate examinations prior to the deadlines established and sufficiently in advance of anticipated employment to permit test results to be received by the Department of Education and processed in the normal certification cycle.

Section 5. (1) For the required NTE tests, the applicant shall pay all fees assessed by the ETS.

(2) Applicants shall not be assessed a fee for taking the Kentucky Specialty Test of Instructional and Administrative Practices.

Section 6. Applicants who fail to achieve a minimum score on any of the required tests as specified in Section 2 of this regulation shall be permitted to retake the test or tests during any regularly-scheduled test administration.

Section 7. [(1) For the period beginning January 1, 1988, and ending June 30, 1988, applicants who attain the minimum passing score on all of the prerequisites examinations as specified in Section 2 of this regulation shall be issued the initial professional certificate for instructional leadership.]

(1) [(2) Beginning July 1, 1988,] Applicants who attain the minimum passing score on all of the prerequisite examinations shall be issued a statement of eligibility for internship by the Superintendent of Public Instruction. This statement of eligibility for internship shall be valid for a four (4) year period.

(2) [(3)] Applicants who do not participate in the required one (1) year internship within the period of eligibility shall reestablish eligibility by repeating and successfully completing all prerequisite examinations in effect at the time of reapplication.

Section 8. (1) To provide for confidentiality of information, the Kentucky Department of Education shall report individual scores on the Kentucky Specialty Test of Instructional and Administrative Practices to the individual applicant only. Such scores will not be released to other individuals or agencies. In accordance with published policy, the ETS will release scores on the NTE only to recipients designated in writing by applicants.

(2) No scores shall be used by the Kentucky Department of Education in an individually identifiable form other than for purposes of determining eligibility for certification as school principal.

Section 9. The Kentucky Department of Education shall collect and analyze data which permit evaluation of the examination prerequisites covered by this regulation on an annual or biennial basis.

DR. JOHN BROCK, Superintendent

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer

(1) Type and number of entities affected: Approximately $200 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: Scores on qualifying exams to be reported to Division of Certification for issuance of certificate/statement of eligibility.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Costs: additional recordkeeping and verification of scores reported. Administration of Kentucky Specialty Exam.

1. First year: Costs: approximately $100 per applicant.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: Additional recordkeeping.

(b) Reporting and paperwork requirements: Issuance of statements of eligibility valid for four years.

(3) Assessment of anticipated effect on state and local revenues: Additional administrative costs: $25,000 per annum.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Testing of prospective principals mandated by KRS 160.027.

(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: No conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.
(6) Any additional information or comments:
TIERING: Was tiering applied? No

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Education
(Proposed Amendment)

705 KAR 4:010. General standards.

RELATES TO: KRS 156.031, 163.020, 163.030, 163.087
PURSUANT TO: KRS 156.031, 163.030, 163.087
NECESSITY AND FUNCTION: KRS 156.031 gives the State Board of Education the function and authority to develop and adopt policies and regulations by which the Department of Education is to be governed in planning, coordinating, administering, supervising, operating, and evaluating occupational education programs, services, and activities; and KRS 163.020 and 163.030 mandate a state vocational education program with certain purposes; and KRS 163.087 gives the State Board authority to set fees. This regulation establishes general standards for all vocational education programs.

Section 1. Vocational education programs shall be designed to serve one (1), or combinations, of the following groups of persons: secondary, postsecondary, short term adult, long term adult, disadvantaged, and handicapped. Instructional programs will not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or handicap.

Section 2. Vocational instruction shall be provided to serve occupations within the following vocational program areas: agribusiness, business and office, health and personal services, home economics, industrial, marketing and distributive, practical arts, public service, and special vocational.

Section 3. Objectives of the instruction shall be designed to:
(1) Prepare individuals for gainful employment as semiskilled or skilled workers, technicians, or semiprofessionals in recognized occupations and in new or emerging occupations; [or]
(2) Prepare individuals for enrollment in advanced or highly skilled vocational and technical education programs; [or]
(3) Assist individuals in the career development process of career awareness and in-depth career exploration necessary for making meaningful occupational choices; [or]
(4) Upgrade and update individuals in their present occupations; or
(5) Achieve any combination of the above.

Section 4. The content of instruction in vocational education programs shall:
(1) Be based on a consideration of the skills, attitude, and knowledge required to achieve the objective of such instruction and include a planned sequence of those essentials of education or experience (or both) deemed necessary for the individual to achieve such objectives.
(2) Be developed and conducted in consultation with potential employers and other individuals having skills and substantive knowledge of the occupation or the occupational fields included in instruction.
(3) Include the most up-to-date knowledge and skills necessary for competencies required to meet the objectives of such instruction.
(4) Be sufficiently extensive in duration and intensive within a scheduled unit of time to enable the student to achieve the objectives of instruction.

Section 5. The vocational program of instruction shall combine and coordinate classroom instruction with field, shop, laboratory, cooperative work, or other occupational experience which:
(1) Is appropriate to the objectives of instruction,
(2) Is of the sufficient duration to develop competencies necessary for the student to achieve such objectives, and
(3) Is supervised, directed, or coordinated by persons qualified under the Kentucky State Plan for the Administration of Vocational Education.

Section 6. Secondary vocational education programs shall provide a variety of learning experiences and related services. Programs in grades seven (7) and eight (8) shall be coordinated to allow students to explore clusters of occupations. Programs at grades nine (9) and ten (10) shall provide in-depth exploration courses by occupational area. Programs at grades eleven (11) and twelve (12) shall provide specialized skill development to make individuals more employable in one (1) group of occupations than any other. Students enrolled in public or private schools shall be permitted to enroll in state-operated vocational programs consistent with that school's student enrollment quota for cooperating local school districts.

Section 7. Long-term adult (postsecondary) programs shall be designed for occupational preparation of persons sixteen (16) years of age or older who have completed or left the regular high school. The programs shall be organized on a full-time basis during the day or evening hours. Students may enroll in all or any part of the scheduled program. The initial registration fee for half-time and full-time in-state, adult students in state-operated schools shall be twenty (20) dollars [for FY '85 and FY '86]; and for out-of-state students, forty (40) dollars [for FY '85 and FY '86]. The monthly tuition for half-time, in-state adult students shall be [five (5) dollars in FY '85 and] eight (8) dollars [in FY '86]; and for out-of-state students, [twenty-five (25) dollars for FY '85 and] thirty (30) dollars [for FY '86]. The monthly tuition for full-time, in-state adult students shall be [ten (10) dollars for FY '85 and] sixteen (16) dollars [for FY '86]; and for out-of-state students, [fifty (50) dollars for FY '85 and] sixty (60) dollars [for FY '86. The fees and tuition for FY '86 shall be continued until changed by the State Board of Education].

Section 8. Short-term adult programs shall be designed to meet the needs of persons who have entered the labor market or are temporarily unemployed and who need training in preparing or

supplementing knowledge and skills for employment [and/]or job advancement. Courses shall consist of either single or multiple units of intensive instruction. Effective September, 1988 the fees for adult short-term classes for the general public for one (1) to eleven (11) hours of instruction per week shall be a minimum of twenty-five (25) cents per hour and a maximum of five (5) dollars per hour for in-state and out-of-state students. Fees shall be established within each vocational region subject to the approval of the Superintendent of Public Instruction or his designee, and fees for individual programs shall be on a cost recovery basis, taking into account administrative and facilities costs, teacher costs, and costs for instructional materials, supplies, and equipment. Compensation for industry-specific training may be negotiated in accordance with 705 KAR 5:100. [for FY '85 and FY '86. These fees shall be in effect until such time as the State Board changes them.]

Section 9. The vocational program shall be designed to accommodate students with special learning needs mainstreamed into the regular program. Special vocational programs in specific occupational areas or incorporating a variety of occupational areas shall be permitted when the handicapped conditions warrant.

Section 10. Instructional personnel in vocational education except teachers of short-term adult programs shall be fully certified under the provisions of the Kentucky State Plan for Vocational Education and other regulations of the State Board of Education. Work experience requirements not included as a part of certification programs shall be approved by the Superintendent of Public Instruction. Persons employed to teach short-term adult programs shall request approval of their work experience [and/] or other qualifications from the Office of Vocational Education. A statement of approval shall be issued to qualified individuals for teaching the specific subject of the program.

Section 11. All instructional personnel shall attend district, regional, or state in-service education meetings called [and/] or approved by the Superintendent of Public Instruction when such meetings are reimbursed by funds from the Office of Vocational Education. Instructional personnel may be excused by the local superintendent when the reasons are justified and submitted in writing to the Superintendent of Public Instruction.

Section 12. Annual plans for vocational programs and applications for funds for the next school year shall be submitted by local educational agencies to the regional program coordinator for vocational education by April 15. The program plan shall be reviewed by the regional staff and the Office of Vocational Education staff and approved by the Superintendent of Public Instruction prior to program implementation.

Section 13. Recognized vocational student organizations shall be an integral part of the instructional program and shall be supervised by qualified vocational education personnel.

Section 14. Each occupational preparation program area shall have an active program advisory committee to assist in planning, implementing, and evaluating programs.

Section 15. A continuous evaluation of the vocational education program shall be conducted by the local educational agency in accordance with requirements and instruments developed or approved by the Department of Education and by the local educational agency to determine the effectiveness of the program in terms of its objectives. The evaluation shall include a follow-up of students after their termination from the program. The Superintendent of Public Instruction shall designate the records and reports to be kept by local educational agencies operating approved vocational education programs. Staff from the Department of Education shall make periodic evaluation visits for program improvement purposes.

Section 16. Where applicable, all vocational education programs shall operate according to guidelines developed by state [and/] or national licensure, certification, and registration agencies having jurisdiction over graduates who seek employment in occupations governed by such agencies.

Section 17. Classrooms, libraries, shops, laboratories, and other facilities, including instructional equipment, supplies, teaching aids, and other materials, shall be provided in quantity and quality to meet the objectives in the vocational instruction. Although the amount of supplies needed by each class will vary in local districts, the districts shall provide an appropriate portion of the operating money allotted with each vocational unit. The facilities for any vocational education program shall be of adequate size and design to accommodate the activities and number of work stations unique to each program. Facilities and equipment shall be approved by the Superintendent of Public Instruction.

Section 18. Vocational preparation programs shall provide a curriculum of sufficient length to permit students to secure entry-level skills in the occupations for which they are training. They shall conform to the requirements in the Kentucky Program of Studies.

Section 19. Minimum and maximum class size shall be based on program design and available facilities. No class shall be offered for less than ten (10) students.

Section 20. A five (5) dollar shop fee shall be charged for each live work project accepted by the school requiring more than one (1) hour of labor. No shop fees shall be charged for projects in schools located in correctional institutions. Student exemptions may be made in compliance with written school policies. Customers will purchase the necessary materials for a shop job or be charged the cost of the materials plus twenty (20) percent markup when they do not provide their own materials. Cosmetology charges shall be based on the State Cosmetology Board requirements.

Section 21. A vocational school may be permitted to provide an optional senior plan for

students from secondary schools being served by that vocational school. A senior plan provides that a student may choose to attend a vocational school for six (6) hours a day while enrolled in a high school for the senior year. The local district shall receive ADA credit for students participating in this plan.

(1) The vocational school requesting permission to implement an optional senior plan shall receive approval from the State Superintendent of Public Instruction in accordance with this and other Kentucky Administrative Regulations.

(2) For ADA calculation purposes, students accepted in the senior plan shall be enrolled in a public school in Kentucky.

(3) The local school superintendent shall certify that students participating in this program will be eligible for graduation upon successful completion of the program.

(4) An annual evaluation of the senior plan shall be submitted to the State Board.

(5) With approval of the local board of education, a local high school may choose to participate in the senior plan. Individual students will have the option of participating in the senior plan or the usual plan of attending a vocational school three (3) hours a day for the junior and senior year.

(6) Participation in the senior plan shall in no way jeopardize the student's high school standing in terms of participation in other high school activities. Participation in the high school activities shall be the responsibility of the local board of education and appropriate arrangements for such participation will be ensured by the vocational school.

Section 22. Requests for exceptions to any standards for vocational instructional programs shall be submitted in writing by the local educational agency, recommended by the appropriate program unit director, and approved by the Superintendent of Public Instruction. Exceptions shall be limited to experimental programs, innovative programs, and unusual cases and shall be approved on an individual and annual basis.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gary Bale
(1) Type and number of entities affected: Approximately 12,000 adults.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No increase.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Allows the agency to offer classes to adults on a cost recovery basis.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No increase.
(3) Assessment of anticipated effect on state and local revenues: Will allow for the State Voc-Tech Schools/area centers offering short-term classes (500 clock hours or less) to recoup costs of such in many cases thus allowing general fund dollars appropriated to serve 1/3 - 1/2 more students than currently being served.
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

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 P.L. 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. 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. Assignment of teachers to special education classes serving more than one (1) category of exceptional pupils (cross-categorical programs) shall meet the following:

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) Teachers of classes for visually impaired. For the 1988-89 [1987-88] school year only, teachers assigned to special education classes established to serve pupils classified as visually impaired shall possess a certificate valid for teaching either elementary or secondary visually impaired when the pupils assigned include both the elementary and secondary levels of instruction.

(e) Teachers of classes for hearing impaired. For the 1988-89 [1987-88] school year only, teachers assigned to special education classes established to serve pupils classified as hearing impaired shall possess a certificate valid for teaching either elementary or secondary hearing impaired when the pupils assigned include both the elementary and secondary levels of instruction.

(f) Teachers of classes for trainable mentally handicapped.

1. For the 1988-89 [1987-88] school year only, teachers assigned to classes established to serve trainable mentally handicapped and who possess a teaching certificate endorsed for teaching trainable mentally retarded or trainable mentally handicapped, grades 1-8, may be assigned to teach pupils in grades 9-12.

2. For the 1988-89 [1987-88] school year only, teachers assigned to classes established to serve trainable mentally handicapped and who possess a teaching certificate endorsed for teaching trainable mentally retarded or trainable mentally handicapped, grades 7-12, may instruct classes which include pupils from [both] the elementary and secondary school levels provided the Office of Education for Exceptional Children has approved an age range waiver.

(g) Teachers of classes for educable mentally handicapped.

1. For the 1988-89 [1987-88] school year only, teachers assigned to classes established to serve educable mentally handicapped and who possess a teaching certificate endorsed for teaching educable mentally retarded or educable mentally handicapped, grades 1-8, may be assigned to teach pupils in grades 9-12.

2. For the 1988-89 [1987-88] school year only, teachers assigned to classes established to serve educable mentally handicapped and who possess a teaching certificate endorsed for teaching educable mentally retarded or educable mentally handicapped, grades 7-12, may instruct classes which include pupils from both the elementary and secondary school levels provided the Office of Education for Exceptional Children has approved an age range waiver.

(h) Teachers with learning and behavior disorders certification. For the 1988-89 [1987-88] school year only, teachers who possess a teaching certificate for learning and behavior disorders, grades 7-12, may instruct classes which include pupils from both the elementary and secondary school levels provided the Office of Education for Exceptional Children has approved an age range waiver.

(i) Teachers of exceptional child kindergarten classes. For the 1988-89 [1987-88] school year only, teachers may be assigned to classrooms established to serve kindergarten age pupils classified as handicapped with valid teaching certificates as follows:

1. A certificate or certificate endorsement for teachers of exceptional children valid for grades K-8 or K-12, except those issued for speech and communication disorders; or

2. A certificate or certificate endorsement for teaching any category of special education and valid for grades 1-8 or grades 1-12, except those issued for speech and hearing.

(j) For the 1988-89 [1987-88] school year only, teachers providing instruction to exceptional children at home or in hospitals shall be provided with the skills needed to meet the individual needs as set forth in the individual education program.

(k) 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.

(l) 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 nonhandicapped 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) Length of school year. The provision of an extended school year program shall be considered for students having handicaps which are severe in nature. Eligibility criteria for placement of students in extended school year programs shall be:

1. Significant regression caused by interruption in educational programming; and
2. Limited recoupment capacity which would render unlikely the attainment of a level of self-sufficiency and independence from caretakers which would be expected for the handicapping condition.

(7) [(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, subdistrict 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 nonpublic 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 reevaluation purposes, the parent(s), principal, teacher(s), or specialist(s) providing services to the child may request a reevaluation. 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) Subdistrict admissions and release committees: For those school districts with a school census figure of 15,000 or over, subdistrict admissions and release committees (ARCs) may be established within the local school district to facilitate school to school placements. The subdistrict ARCs shall not supplant administrative and school-based admissions and release committees and their respective functions. Subdistrict ARCs shall be established to conform with district-specified school groupings. Those local school districts wishing to establish subdistrict 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 subdistrict 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 nondiscriminatory in that:
(a) Techniques and/or materials used are nonbiased relative to race, culture, socioeconomic 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 reevaluated 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 ongoing 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, whereabouts of the parent cannot be determined or the child is a ward of the state (parental rights have been terminated), 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 local school district in cooperation with other public and private agencies shall recruit persons who can and will serve as surrogate parents. 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;

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 a surrogate to represent a child with the child's local school district.

b. The local school district shall acquire the proper documentation to substantiate 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. The local school district shall assign a surrogate within fifteen (15) school days of the receipt of request for surrogate parent.

d. The assigned surrogate shall represent the child in all matters relating to identification, evaluation and placement, and the provision of a free appropriate public education.

e. Surrogates shall not be assigned to children who have reached the age of majority.

f. An individual assigned as a surrogate shall not be an employee of a public agency involved in the education or care of the child.

(i) Testing and evaluation materials utilized for the purpose of evaluation and placement of exceptional children must be selected and administered so as not to be racially or culturally discriminatory.

(j) Decisions regarding the placement of exceptional children shall be made with regard to educating these pupils to the maximum extent appropriate with their nonhandicapped peers in the least restrictive environment.

Section 10. Confidentiality of Personally Identifiable Information. The public agency shall develop and adopt policies and procedures consistent with the provisions of the Family Educational Rights and Privacy Act and confidentiality requirements of P.L. 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 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 P.L. 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.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Vivian Link

(1) Type and number of entities affected: ESY-178 local school districts, TA-same.

(a) Direct and indirect costs or savings to those affected: ESY-state regulations preclude the use of minimum foundation program monies to provide services in excess of 185 days, therefore programs would have to be funded by local, federal or other public agency funds. Exact fiscal impact cannot be determined at this time. TA-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: ESY-Handicapped students extended school year programs would require the development of IEP's on each student. TA-None.

(2) Effects on the promulgating administrative body: ESY-None, TA-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: ESY-None, TA-None.

(3) Assessment of anticipated effect on state and local revenues: ESY-Exact fiscal impact cannot be deterined at this time. TA-None.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: ESY-None, TA-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. Nature of the changes rendered tiering inapplicable.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate) ESY-While P.L. 94-142 does not specifically require extended school year programs for handicapped students, judicial interpretations have determined that local education agencies cannot blanketly refuse to provide such services, and must provide them if the need for services is warranted after individualized consideration. This regulation provides criteria for local education agencies to follow in considering a student's eligibility for an extended year program. TA-P.L. 94-142 allows states to determine certification and licensure requirements for service providers, therefore there are no minimum standards contained in the federal mandate.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) See above.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. See above.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Proposed Amendment)

707 KAR 1:060. Identification, evaluation and placement policy and procedure.

RELATES TO: KRS 156.035, 157.200 to 157.290
PURSUANT TO: KRS 156.035, 156.070, 157.221
NECESSITY AND FUNCTION: KRS 156.035 authorizes the State Board of Education to implement the provisions of any act of Congress appropriating and apportioning funds to the state; and KRS 157.200 to 157.240 establishes the state's statutory framework for special education programs. This regulation establishes policies and procedures to assure that each child, parents and the local school districts will be guaranteed procedural safeguards relative to the identification, evaluation and placement of exceptional children, in compliance with 20 U.S.C. §1415 and the consent agreement settling Kentucky Association for Retarded Children, et al. v. Kentucky State Board of Education et al., Civil Action No. 435, U.S. District Court, Eastern District of Kentucky.

Section 1. The "Due Process Policy and Procedure Manual, July, 1988 [1983]," copy of which is attached hereto and filed by reference, is hereby approved. This manual fulfills requirements of the Consent Agreement, Civil Action No. 435, and 20 U.S.C. § 1415, and shall be referred to as the "Due Process Policy and Procedure Manual," for identification, evaluation and placement of exceptional children. Copies may be obtained from the Office of Education for Exceptional Children, State Department of Education, Frankfort, Kentucky 40601.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Vivian Link
(1) Type and number of entities affected: 178 local school districts.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Change was federally mandated, 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: None
TIERING: Was tiering applied? No. Nature of the change did not render tiering inapplicable.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate) Change was mandated by U.S. Department of Education Monitoring Report.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) See

above.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Proposed Amendment)

707 KAR 1:080. Appeals board.

RELATES TO: KRS 156.035, 157.200 to 157.290
PURSUANT TO: KRS 156.035, 156.070, 157.221
NECESSITY AND FUNCTION: KRS 156.035 authorizes the State Board of Education to implement the provisions of any act of Congress appropriating apportioning funds to the state; and KRS 157.200 to 157.290 establishes the state's statutory framework for special education programs. This regulation establishes the Exceptional Appeals Board to review initial due process hearing decisions by local education agencies, in compliance with 20 U.S.C. § 1415(c) and current federal interpretation thereof and in compliance with the consent agreement settling Kentucky Association for Retarded Children, et al., v. Kentucky State Board of Education, et al., Civil Action No. 435, U.S. District Court, Eastern District of Kentucky.

Section 1. There is hereby established for the Department of Education the Exceptional Children Appeals Board consisting, for each appeal filed, of three (3) members of the department's pool of due process hearing officers. The Superintendent of Public Instruction shall appoint, for each appeal filed, three (3) of such persons to serve as members of said board and shall designate one (1) of them as chairman. Such members shall not be employees of a public agency which is involved in the education or care of the child, or an employee of the Department of Education and shall not appear to have a vested interest in the outcome of the appeal.

Section 2. Any person who is a party to the hearing at the local school system level in a matter involving the identification, evaluation, or placement of an exceptional child as provided in 707 KAR 1:051 and 707 KAR 1:060, and who is aggrieved by the order on such hearing, may appeal such order in writing by certified mail to the Exceptional Children Appeals Board within <u>thirty (30)</u> [fourteen (14)] calendar days of the entry of such order. This appeal shall also be submitted to the opposing party who will then have <u>twenty-one (21)</u> [seven (7)] calendar days in which to respond in writing to the Exceptional Children Appeals Board. The board may also hear such a matter upon a showing that no hearing was provided at the local level.

Section 3. The chairman of the Exceptional Children Appeals Board shall set the matter for the hearing within ten (10) calendar days after receipt of the written appeal unless the parties to the appeal agree to a longer period of time.

Section 4. The Exceptional Children Appeals Board shall determine the case upon the record established at the hearing at the local level. It may allow the introduction of additional testimony, documents and other evidence, including oral arguments upon a showing of good cause. The board shall not be bound by the formal rules of evidence.

Section 5. The Exceptional Children Appeals Board shall make findings of fact, conclusions of law, and a decision within thirty (30) days of receipt of the appeal of a due process hearing decision.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Vivian Link
(1) Type and number of entities affected: 178 Local school districts.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Change was federally mandated, 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: None
TIERING: Was tiering applied? No. Nature of the change did not render tiering applicable.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate) Change was mandated by U.S. Department of Education Monitoring Report.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) See above.

3. If the proposed regultion imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Proposed Amendment)

707 KAR 1:110. Kentucky School for the Blind; admission policies.

RELATES TO: KRS 167.150, 20 U.S.C. §1415
PURSUANT TO: KRS 156.070, 167.150
NECESSITY AND FUNCTION: KRS 167.150 authorizes the State Board of Education, upon recommendation of the Superintendent of Public Instruction, to prescribe admission policies for pupils to attend the Kentucky School for the Blind; and 20 U.S.C. §1415 mandates administrative procedural safeguards with respect to complaints in regard to the provision of a free appropriate public education. This regulation implements that function of prescribing admission criteria and providing for any legally required administrative review of admission decisions by KSB.

Section 1. Statement of Purpose. The educational programs at the Kentucky School for the Blind (KSB) are designed to meet the educational needs of blind and visually impaired [severely visually handicapped and blind] students. Special emphasis is placed on meeting the needs of students in relation to their visual impairments. Specialized materials, techniques, and aids are used to teach academic subjects, as well as courses needed for well-rounded development, including career-vocational education, music, physical education, orientation and mobility, and daily living and recreation and leisure skills. The overall program is planned to develop each child's ability [potential] for living independently. [(]Counseling, off-campus programs, athletic programs, and student organizations[, etc.,] give experiences which help develop the confidence and skills needed to deal with a variety of social situations.[)]

Section 2. Referral Procedures. Inquiries concerning services of KSB for prospective students may come to the school from parents, legal guardians, agency personnel and other interested people; referrals are made through local school districts. Subsequent to the initial referral, determinations regarding placement of the child shall be made in accordance with procedures outlined in 707 KAR 1:003 and 707 KAR 1:051. Available written reports on prospective students are requested for review by KSB's multidisciplinary [Educational] evaluation team prior to scheduling of the initial evaluation of the child. These reports are a part of the intake procedure and may include but are not limited to the following areas:

(1) Educational history to include reports from programs attended previously.
(2) Family history to include medical, developmental, social and behavioral history of the child.
(3) Ophthalmological or optometric evaluation.
(4) Psychological evaluation.
(5) Audiological, speech, language evaluation.
(6) Complete physical examination to include:
(a) Physical development;
(b) Digestive and/or intestinal difficulties, as indicated;
(c) Neurological information;
(d) Seizure history and prognosis;
(e) Medications;
(f) Bowel and bladder difficulties;
(g) Cardiac history and prognosis;
(h) Hereditary problems; and
(i) Orthopedic evaluation as indicated.

Section 3. Eligibility and Criteria for Admission. Admission is determined by the following eligibility criteria:
(1) The primary sensory handicap of the student shall be visual impairment. Attendance at KSB is provided tuition-free to Kentucky residents, and Kentucky residents will be given first consideration for any available openings at the school. Out-of-state students shall be eligible for admission, and tuition fees for those students shall be determined by the State Board of Education, pursuant to KRS 167.150.
(2) The student shall be between five (5) and twenty (20) years of age inclusive.
(3) The prospective student shall possess a visual impairment, after correction, which is so severe that the child's educational performance is adversely affected, resulting in the need for the specialized instructional materials, aids, and techniques which are offered by KSB in order to succeed in an educational program. A concomitant handicapping condition shall not exclude the individual, however, visual impairment must be the primary handicapping condition.
(4) The prospective student shall meet the following criteria as related to intellectual functioning and adaptive behavior:
(a) Be able to adjust socially and psychologically to the school environment, presenting no deficits in social competence which, even with modifications and adaptations, would continue to significantly interfere with either the student's or other students' educational endeavors.
(b) Demonstrate ability for academic and vocational learning from programs available at KSB, as ascertained from a variety of sources, including but not limited to individual intellectual assessment, individual educational assessment of basic skills, behavior observations, assessment of adaptive behaviors, developmental and social history, vocational and prevocational assessments, and medical information. If a prospective student does not demonstrate ability for academic and vocational learning, self-care, and independent functioning as an adult, or if extensive medical care will be required into adulthood, the student will not be deemed eligible for acceptance into KSB.
(c) Exhibit the following basic prerequisite skills: schedule trained in toileting; acceptance of solid foods; ability to spoon feed and drink from a cup; need for minimal assistance in bathing, dressing, and grooming;

and expression of his or her needs through speech or other vocalizations or acceptable modes of communication.

(5) Children with significant medical problems which are beyond the capability of the school's health center cannot be considered for admission to KSB.

(6) Children with orthopedic involvement must require no more than minimum assistance in moving about using orthopedic aids, including wheelchairs, braces, and walkers. These children will be evaluated individually to determine their ability to function adequately within KSB.

[Initial Evaluation Procedures. The procedures are as follows:]

[(1) Upon receipt of the completed intake information which includes signed parental permission to evaluate the child and to release information to KSB, KSB personnel will review the existing information and begin scheduling for the necessary assessments. Each child who comes to KSB for evaluation must be accompanied by a parent or guardian or by a social worker or local school district representative. Depending upon the extent of the available assessment information, the initial assessment period at the school may range from one (1) to three (3) days.]

[(2) The initial evaluation may include but not be limited to the following assessments, all to be administered in the child's native language or other nondiscriminatory mode:]

[(a) Educational assessments which may include achievement tests, diagnostic tests, and developmental scales;]

[(b) Orientation and mobility skills;]

[(c) Speech, hearing and language development;]

[(d) Daily living skills;]

[(e) Visual functioning;]

[(f) Gross and fine motor skills;]

[(g) Psychological assessment; and]

[(h) Informal and formal observations in various areas, such as leisure time activities, meals, classroom activities, and dormitory activities.]

[(3) A summary conference will be held at the conclusion of the evaluation at which time the preliminary results will be explained to the appropriate individual who accompanies the child for evaluation. A written report will follow within fifteen (15) working days of the evaluation.]

[(4) Following the completion of a written report, a meeting of KSB's Evaluation Team will be held to review the assessment information.]

[(5) The findings of the Evaluation Team will be sent to the parent(s) and local school district for use in the admissions and release committee process.]

Section 4. Initial Evaluation Procedures. The procedures are as follows:

(1) Upon receipt of the completed intake information which includes signed parental permission to evaluate the child and to release information to KSB, KSB personnel will review the existing information and begin scheduling for the necessary assessments. Each child who comes to KSB for evaluation must be accompanied by a parent or guardian or by a social worker or local school district representative. Depending upon the extent of the available assessment information, the initial assessment period at the school may range from one (1) to three (3) days.

(2) The individual assessment shall be conducted by a multidisciplinary evaluation team; shall be administered in the child's native language or other nondiscriminatory mode; and shall include, but not necessarily be limited to the following, which may include evaluations provided to KSB by the parents, local school district, or other agency which were conducted within one (1) year prior to the current assessment:

(a) Individual standardized norm-referenced or informal criterion-referenced educational assessment of basic skills;

(b) Orientation and mobility skills assessment;

(c) Speech, hearing and language development assessment;

(d) Daily living skills assessment;

(e) Visual functioning assessment;

(f) Gross and fine motor skills assessment;

(g) Informal and formal observations in various areas, such as leisure time activities, meals, classroom activities, and dormitory activities; and

(3) At the conclusion of the evaluation period, the KSB multidisciplinary evaluation team shall review all assessment information to determine eligibility for placement at KSB according to Section 3 of this regulation.

(4) Once a determination of eligibility has been made by KSB's multidisciplinary evaluation team, written notification of eligibility status shall be sent to the parents, local education agency and referral source within fifteen (15) days. The notification shall include a description of the eligibility criteria, an item by item determination of whether or not the child has met each of the criteria, a description of the basis in the evaluation information for making the determination, and a description of other factors involved in the eligibility determination. If the child is found to be ineligible for services, the notification shall contain:

(a) A statement of the skills needed by the child in order to be considered for eligibility in the future.

(b) A description of the outreach services that will be recommended for the child while being maintained in a local school district program; and

(c) Notice of the parent's right to request a review of the eligibility determination.

[Eligibility and Criteria for Admissions. Admission is determined by the following eligibility criteria:]

[(1) The primary handicap of the student will be visual impairment. Attendance at KSB is provided tuition-free to Kentucky residents, and Kentucky residents will be given first consideration for any available openings at the school. Out-of-state students shall be eligible for admission, and tuition fees for those students shall be determined by the State Board of Education, pursuant to KRS 167.150.]

[(2) The student must be between five (5) and twenty (20) years of age inclusive.]

[(3) A child's visual impairment after correction must be such that he or she needs specialized instructional materials, aids, and techniques which are offered by KSB in order to succeed in an educational program.]

[(4) The prospective student must meet the following criteria as related to intellectual functioning and adaptive behavior:]

[(a) Be able to adjust socially and

psychologically to the school environment, presenting no deficits in adaptive behavior which would interfere with either the student's or other students' educational endeavors.]

[(b) On a standardized instrument for the evaluation of intellectual functioning, achieve at least at the trainable mentally handicapped level as defined in 707 KAR 1:057, and benefit from the educational offerings of this school. When it is not possible to determine a child's level of intellectual functioning and level of adaptive behavior during the initial evaluation, the student may be accepted for an extended evaluation time upon the recommendation of KSB Evaluation Team if he or she appears to have the potential to function at an acceptable level or demonstrates the ability to develop basic skills.]

[(c) Exhibit the following basic prerequisite skills or demonstrate the ability to develop these skills: Be schedule trained in toileting, accept solid foods, be able to spoon feed and drink from a cup, need minimal assistance in bathing, dressing, and grooming, express his or her needs through speech or other vocalizations, natural gestures or signs.]

[(5) Children with significant medical problems which are beyond the capability of the school's health center cannot be considered for admission to the residential program. Prospective students also must not require skilled nursing care.]

[(6) Children with orthopedic involvement must require no more than minimum assistance in moving about using orthopedic aids, including wheelchairs and walkers. These children will be evaluated individually to determine their ability to function adequately within the residential program. A request for extended trial placement may be made if it is not possible to determine a child's ability to function based on existing information.]

Section 5. Placement. If a student is determined to be eligible for placement at [admission to] KSB, and Administrative Admissions and Release Committee (AARC), consisting of parents and representatives of the local school district and KSB, shall convene. Pursuant to 707 KAR 1:051, the AARC shall be responsible for the development, implementation and monitoring and evaluation of the student's individual education program (IEP). [educational placement within the school will be determined by each child's Individualized Education Program as developed by KSB, local school districts, and parents or guardians pursuant to 707 KAR 1:051.]

Section 6. Early Termination. (1) A review for early termination may be initiated by the parents, local school district or the KSB multidisciplinary evaluation team to determine a student's eligibility for continued placement at KSB. Situations which may lead to review of initial eligibility determination may include, but not limited to the following: [Change of Placement. A placement review may be initiated at any time by KSB, local school districts, and parents or guardians to determine if continued placement at KSB is appropriate. Review procedures shall be in accordance with the admission and release committee process as set forth in 707 KAR 1:051. Situations which lead to a review of placement may include but are not limited to the following:]

(a) [(1)] A change of circumstances, e.g., student progress, which makes local school district placement appropriate.

(b) The student fails to meet criteria related to intellectual functioning an adaptive behavior; such as, any of the following:

1. The student's behavior pattern is dangerous to self or others, e.g., continuing destructive, physically or sexually aggressive behavior, and documented evidence indicates efforts to control the behavior through specific behavioral programming or medication have failed.

2. Inability, after systematic implementation and evaluation of the prescribed IEP, to make minimum progress toward behavioral or educational objectives.

[(2) Destructive, physically aggressive, sexually aggressive, or other unacceptable behavior that threatens the safety or well being of the child or others and that cannot be brought under control through the use of behavior modification, personal counseling, or medication.]

[(3) Failure after a reasonable period to make minimum progress towards behavioral or educational objectives (i.e., self-help, language, gross and fine motor, cognitive, social/emotional) that have been established for the child in his or her Individualized Education Program.]

(c) [(4)] Development of significant medical problems as described in Section 3(5) [4] of this regulation.

(2) Once a review for early termination has been completed by the KSB multidisciplinary evaluation team, written notification of eligibility status will be sent to the parents and local school districts according to procedures outlined in Section 4(4) of this regulation.

Section 7. Change of Placement Within the Agency. (1) All changes of placement within the agency's programs shall meet criteria set forth in 707 KAR 1:051, Section 6.

(2) Any changes in placement within the agency's programs shall follow due process procedures to insure that exceptional children and youth and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and placement including written prior notice requirements as specified in 707 KAR 1:060.

(3) Any change in placement within the agency's programs shall be subject to established admissions and release committee procedures in 707 KAR 1:051, Section 3 and consideration of the least restrictive environment concept.

Section 8. Review of Eligibility Determinations. (1) If a parent of a current or prospective student or a student over the age of eighteen (18) disagrees with the decision of the KSB multidisciplinary evaluation team regarding initial eligibility or early termination, the parent or student may request a review of the eligibility determination.

(2) During the pendency of a review, the student must remain in his or her present educational placement, unless all parties agree otherwise. If the review involves a student seeking initial admission to KSB, the student, with the consent of the parents, shall be provided a program by the LEA until the

completion of all the proceedings.

(3) A written request shall be submitted to the Superintendent of Public Instruction within thirty (30) days of receipt of the notification of eligibility status. The request shall include:

(a) The notice of eligibility status;

(b) A letter specifying the areas of disagreement;

(c) The rationale for such; and

(d) Any documentation which the parent or student wishes to be considered.

(4) Upon receipt of the request, the Superintendent of Public Instruction shall:

(a) Notify the superintendent of KSB of the request and direct the superintendent of KSB to submit the following:

1. All evaluation information;

2. All documentation utilized in the eligibility determination;

3. Any pertinent explanation of or justification for the eligibility determination; and

4. Any document or other information which the school wishes to have considered.

(b) Appoint an impartial eligibility review panel. The panel shall consist of a due process hearing officer normally assigned by the Department of Education to hearings under 707 KAR 1:060, a parent of a visually impaired child, and a professional educator with expertise in the category of blind or visually impaired. The panel members shall not be employees of the Department of Education or the involved local school district and shall have no vested interests that conflict with the student's educational interests. It is the responsibility of the Department of Education to select, train and maintain a registry of panel members to serve on the eligibility review panel. The Department of Education shall be responsible for the provision of appropriate training to those persons to be selected as panel members.

(5) The eligibility review panel shall have the responsibility of conducting a hearing and recommending in writing to the State Board of Education within sixty (60) days of receipt of the initial request for review, one of the following:

(a) Upholding the decision of KSB's multidisciplinary evaluation team;

(b) Reversing the decision; or

(c) Finding that insufficient evidence was presented upon which to base a determination of eligibility. If the panel finds that insufficient evaluative evidence was presented upon which to base a determination of eligibility, the panel may recommend that the State Board of Education order completed evaluation information to be submitted to it.

(6) Any party to the hearing shall be accorded the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children; the right to present evidence and confront, cross-examine, and compel the attendance of witnesses; the right to a written or electronic verbatim record of such hearing; and the right to written recommended findings of fact and decisions.

(7) The panel shall render a written decision, based solely on the evidence presented to it, with recommended findings of fact and conclusions regarding the eligibility of the involved student, such to be submitted to the State Board of Education for consideration at its next regular meeting or at a special meeting for such purpose.

(8) The State Board of Education shall consider and render a final written decision on the matter, with said decision to include written findings of fact if the recommendation of the eligibility review panel is not adopted.

(9) The decision of the state board is binding on the parties involved for one (1) calendar year.

DR. JOHN BROCK, Superintendent

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Vivian Link

(1) Type and number of entities affected: 2 state 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: Will require completion of the "Notification of Eligibility Status" on each student who is rejected for admission and for those students who are undergoing an early termination.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Possible costs for evaluations ordered by eligibility review panel, costs for reimbursement of panel members and staff support for panel.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Panel will generate a written decision with recommended findings of fact and conclusions for submission to the board.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not 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. Nature of the changes rendered tiering inapplicable.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate). Federal statutes do not contain minimum uniform standards for a review process regarding determinations of eligibility for admission to state schools, but do mandate procedural safeguards for handicapped students. These amendments provide those procedural safeguards.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) See above.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. See above.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Building Codes Enforcement
(Proposed Amendment)

815 KAR 7:020. Building code.

RELATES TO: KRS Chapter 198B
PURSUANT TO: KRS 198B.040(7), 198B.050
NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This regulation establishes the Kentucky Building Code basic provisions relating to new construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation and electrical systems.

Section 1. The Kentucky Building Code shall include the National Electrical Code, 1987 Edition, N.F.P.A. #70, published by and copies available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269. The National Electrical Code is hereby adopted by reference.

Section 2. The Kentucky Building Code shall include the "BOCA National Building Code/1987," Tenth Edition, published by and copies available from Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477. That code, including all standards listed in Appendices A through D are hereby adopted by reference on June 18, 1987, with the following additions, exceptions and deletions:

(1) Delete Article 1 in its entirety. All requirements for the administration and enforcement of this regulation are set forth in 815 KAR 7:010 with fees established by 815 KAR 7:013.

(2) Change subsection 201.0 to include the following additional definitions:

(a) "Construction: The erection, fabrication, reconstruction, substantial alteration or conversion of a building, or the installation of equipment therein."

(b) "Equipment: Facilities or installations including but not limited to, heating, electrical, ventilating, air-conditioning, and refrigerating facilities or installations."

(c) "Reconstruction: The process of reproducing by new construction the exact form and detail of a vanished building, structure or object or a part thereof as it appeared at a specific period of time."

(d) "Rehabilitation: The process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use of while preserving those portions or features of the property which are significant to historical, architectural and cultural values."

(e) "Restoration: The process of accurately recovering the form and details of the property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work."

(f) "Stabilization: The process of applying measures designed to reestablish a weather-resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists."

(3) Change subsection 201.0 definitions to read as follows:

(a) "Basement: That portion of a building the average height of which is at least half below grade, which is ordinarily used for purposes such as storage, laundry facilities, household tool shops, and installation and operation of heating, cooling, ventilating facilities, but which is not ordinarily used for purposes of general household habitation." (See "Story Above Grade.")

(b) "Story: That part of the building comprised between a floor and the floor or roof next above which is not a basement or an attic."

(4) Change subsection 309.5 to read as follows: "309.5 Use group R-4 Structures: This use group shall include all detached one (1) or two (2) family dwellings not more than than three (3) stories in height, and their accessory structures as indicated in the Appendix B Standard, One (1) and Two (2) family Dwelling Code. All such structures shall be designed and built in accordance with the requirements of this code for use group R-3 structures or shall be designed and built in accordance with all the requirements of the one (1) and two (2) family dwelling code as listed in Appendix B, except that the requirements of the state plumbing code (Article 28) shall supersede those conflicting requirements of the one (1) and two (2) family dwelling code. This choice shall be made by the builder at the time of plans submission. Nevertheless, any builder may use exception #3 of Section 809.4 to determine minimum size of egress windows."

(5) Change subsection 505.1 to read as follows: "505.1 Alteration Limitations: These provisions shall not be deemed to prohibit

alterations within the limitations of Sections 106 and 505.2 provided an unlawful change of use is not involved."

(6) Delete Sections 512.1 through 512.4.1 and substitute the following: "512.1" Requirements for accessibility of the handicapped: Please see 815 KAR 7:060 for construction requirements providing accessibility to the handicapped, Article 33 of this Code.

(7) Amend Article 32 as follows:

(a) Amend Section 3202.1 to read as follows: "The provisions in the following Section 3202.1.1 through 3202.1.5 shall apply to existing buildings that will continue to be, or are proposed to be, in Use Groups A, B, E, F, M, R and S. These provisions shall not apply to historic buildings as provided for in Section 102.5."

(b) Amend subsection 3202.1.5 to read as follows: "All portions of the buildings proposed for change in use shall conform to the provisions of Article 33 as required by Section 3302.1."

(8) Change Section 600.8.2 by creating a new subsection which shall read as follows: "600.8.2 Housekeeping: Periodic inspections of existing uses and occupancies shall be made by the appropriate fire and health officials to insure maintenance of good housekeeping conditions."

(9) Change Section 608.1 to read as follows: "Private garages located beneath rooms in buildings of Use Groups R-1, R-2, R-3 or I-1 shall have walls, partitions, floors and ceilings separating the garage space from the adjacent interior spaces constructed of not less than one (1) hour fire-resistance rating. Attached private garages shall be completely separated from the adjacent interior spaces and the attic area by means of one-half (1/2) inch gypsum board or equivalent applied to the garage side. The sills of all door openings between the garage and adjacent interior spaces shall be raised not less than four (4) inches (102 mm) above the garage floor. The door opening protectives shall be one and three-fourths (1 3/4) inch solid core wood doors or approved equivalent. In lieu of the required one and three quarter (1 3/4) or twenty (20) minute door, an approved automatic sprinkler head located directly above the door in the garage and properly connected to the domestic water system or an approved automatic detector located directly above the door in the garage shall be acceptable."

(10) Delete Section 702 and Section 804 in their entirety.

(11) Amend Article 11 as follows:

(a) Change Section 1100.0 by creating a new subsection which shall read as follows: "1100.2 Certificate of Compliance: the provisions of this article and Article 12 may be deemed to have been satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building official."

(b) Amend subsection 1105.4 by changing "Section 103.3" to "Section 106.3".

(c) Amend subsection 1113.1.1, Additions, by adding an exception to read as follows: "Exception: in Zone 1, additions that increase the height of an existing building shall not be required to conform to the provisions of this subsection."

(12) Delete subsections 904.4.2, 904.4.3, 904.4.4 in their entirety; and amend subsection 904.4 to read as follows: "Interior hangings and decorations shall comply with Section 904.4.1."

(13) Change subsection 2500.2 to read as follows: "2500.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(14) Add two (2) new subsections to Section 2500.0 which shall read as follows:

(a) "2500.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1983 Edition of the ASME Boiler and Pressure Vessel Code, ANSI/ASME BPV-VIII-1."

(b) "2500.4 Mechanical Code: All mechanical equipment and systems not covered by 2500.2 or 2500.3 but which are required by other provisions of this code to be installed in accordance with the mechanical code listed in Appendix A, shall be constructed, installed and maintained in conformity with the BOCA Basic Mechanical Code/1987 including all applicable standards listed within Appendix A."

(15) Delete Article 29 in its entirety.

(16) Amend Article 27 by changing, creating or deleting certain portions thereof, as follows:

(a) Create a new subsection 2700.5 which shall read as follows: "2700.5 Electrical Inspections: Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with 815 KAR 35:015."

(b) Create a new subsection to 2700.5 to read as follows: "2700.5.1 Tentative Interim Amendment. Notwithstanding the provisions of Section 310.15(b) of the National Electrical Code dealing with ampacities of underground conductors, compliance with TIA #87-4 of NFPA shall be deemed to satisfy the intent of the Code."

(c) [(b)] Delete Subsections 2701.3, 2704.3, and 2704.4.

(d) [(c)] In Subsections 2702.1, 2702.3 and 2703.1 change the words "Building Official" to "Certified Electrical Inspector."

(17) Delete subsections 2800.1 through 2807.1 in their entirety and substitute the following: "2800.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of Chapter 318 of the Kentucky Revised Statutes and the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations."

(18) Change subsection 809.4 to read as follows:

"809.4 Emergency escape: Every sleeping room below the fourth story in buildings of Use Group R and I-1 shall have at least one (1) operable window or exterior door approved for emergency egress or rescue. The units must be operable from the inside to a full clear opening without the use of separate tools. Where windows are provided as a means of egress or rescue, they shall have a sill height not more than forty-four (44) inches (1118 mm) above the floor. All egress or rescue windows from sleeping rooms must have a minimum net clear opening of five and seven-tenths (5.7) square feet (0.532). The minimum net clear opening height dimension shall be twenty-four (24) inches (610 mm). The minimum net clear opening width dimension shall be twenty (20) inches (508 mm).

Bars, grilles or screens placed over emergency escape windows shall be releasable or removable from the inside without the use of a key, tool or excessive force."

EXCEPTIONS

1. Grade floor windows may have a minimum net clear opening of five (5) square feet (0.47 m2).
2. In buildings where the sleeping room is provided with a door to a corridor having access to two (2) remote exits in opposite directions, then an outside window or an exterior door for emergency escape from each such sleeping room is not required.
3. Buildings equipped throughout with a complete automatic fire suppression system.
4. Egress windows located on the first and second stories in multiple family dwellings (R-2 and R-3 use groups) and one (1) and two (2) family dwellings, may have a minimum net clear opening height dimension of twenty-two (22) inches and a minimum width dimension of twenty (20) inches; and the net clear opening area may be reduced to no less than four (4) square feet. The minimum total glazed area must be five (5) square feet in the case of a ground floor window and not less than five and seven-tenths (5.7) square feet in the case of a second story window. (This exception applies only if the sash frames can be readily broken or removed.)

Section 3. Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance. The following subsections of Article 26 of the BOCA Basic Building Code are deleted or changed to read as follows:

(1) Change Subsection 2603.4 of Article 26 to read as follows: "2603.4 Posting certificates of compliance: The owner or lessee shall post the last issued certificate of compliance in a conspicuous place on the elevator, available to the building official."

(2) Change Subsection 2602.4.1 of Article 26 to read as follows: "2602.4.1 Periodic Inspection Intervals: Periodic inspections shall hereafter be made at intervals of not more than twelve (12) months for all passenger elevators, manlifts and escalators."

(3) Change Subsection 2610.1 of Article 26 to read as follows: "2610.1 General: The construction of machine rooms and related construction for passenger and freight elevators and dumbwaiters shall be protected from the weather, and shall be enclosed with fire resistive enclosures. Enclosures and access doors thereto shall have a fire endurance at least equal to that required for the hoistway enclosure in Table 401."

Section 4. Elevators. On page 485 of Appendix A of the BOCA National Building Code under "Elevators, Escalators and Moving Walks," add the following citations: "A17.1B-1985; A17.1C-1986, with the exception of rules 102.2(c)(4) and 700.4b, 700.5, 700.7b, 700.10b, 707.4."

Section 5. Amend Article 3 of the 1987 Edition of the BOCA National Building Code adding a new section to read as follows: "310.4 Tobacco auction warehouses: Warehouses, for the sale of tobacco only, of Type 1, Type 2, or Type 3 construction, may be constructed without a sprinkler system when all the following requirements have been met:

(1) The initial submission of plans to the Department of Housing, Buildings and Construction shall include a signed certificate by the owner that the warehouse will be used solely for the sale of tobacco on a seasonal basis or for the storage of noncombustibles.

(2) A manual fire alarm and smoke detection system with notification to the local fire service shall be provided with installation in accordance with Section 1017 of this code.

(3) An eighteen (18) foot paved and posted fire lane surrounding the entire perimeter of the building shall be provided and be accessible from a public street.

(4) A fifty (50) foot fire separation shall be maintained between the warehouse and the lot line and the warehouse and the nearest building."

Section 6. Amend the 1987 Edition of the BOCA National Building Code as follows:

(1) Amend Article 5 as follows:

(a) In subsection 505.1, change the number, "103.0," to read "106.0."

(b) In subsection 511.1, change the number, "124.0," to read "123.0."

(c) Delete subsection 513.1 in its entirety.

(2) Delete the reference to the BOCA Fire Prevention Code listed in Appendix A and install in its place the following: "The Kentucky Fire Safety Standards (815 KAR 10:020 - Fire Safety Standards) shall be used as the fire prevention code."

(3) Amend Figure 1113.1 of Article 11 by adding the following list of 120 Kentucky counties showing the assigned earthquake risk zone for each. The risk zone assigned herein shall supersede any general area designations as shown upon the face of the map.

Earthquake Risk Zone #1

Adair	Elliott	Laurel	Oldham
Allen	Estill	Lawrence	Owen
Anderson	Fayette	Lee	Owsley
Barren	Fleming	Leslie	Pendleton
Bath	Floyd	Letcher	Perry
Bell	Franklin	Lewis	Pike
Boone	Gallatin	Lincoln	Powell
Bourbon	Garrard	Logan	Pulaski
Boyd	Grant	Madison	Robertson
Boyle	Grayson	Magoffin	Rockcastle
Bracken	Greene	Marion	Rowan
Breathitt	Greenup	Martin	Russell
Breckinridge	Hancock	Mason	Scott
Bullitt	Hardin	Meade	Shelby
Butler	Harlan	Menifee	Simpson
Campbell	Harrison	Mercer	Spencer
Carroll	Hart	Metcalfe	Taylor
Carter	Henry	Monroe	Todd
Casey	Jackson	Montgomery	Trimble
Christian	Jefferson	Morgan	Warren
Clark	Jessamine	Muhlenberg	Washington
Clay	Johnson	McCreary	Wayne
Clinton	Kenton	McLean	Whitley
Cumberland	Knott	Nelson	Wolfe
Daviess	Knox	Nicholas	Woodford
Edmonson	Larue	Ohio	

Earthquake Risk Zone #2	Earthquake Risk Zone #3
Caldwell	Ballard
Calloway	Carlisle
Crittenden	Fulton
Henderson	Graves
Hopkins	Hickman
Lyon	Livingston

Trigg	Marshall
Union	McCracken
Webster	

(4) Change subsection 2203.2.1.7 to read as follows: "Glazing in fixed panels having a glazed area in excess of nine (9) square feet (0.84 m^2) with the lowest edge less than eighteen (18) inches (457 mm) above the finish floor level or walking surface within thirty-six (36) inches (914 mm) of such glazing, and the finish floor or walking surface are extended on both sides of said glazing. In lieu of safety glazing, such glazed panels may be protected with a horizontal member not less than one and one-half (1 1/2) inches (38 mm) in width when located between twenty-four (24) inches (610 mm) and thirty-six (36) inches (914 mm) above the walking surface."

(5) Change section 2203 by adding a new subsection 2203.3 which shall read as follows:

(a) "2203.3 Labeling requirements:

1. Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in such a location within the Commonwealth of Kentucky shall be permanently labeled by such means as etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of ANSI Standard Z-97.1 and Z-97.1a listed in Appendix A and such further requirements as may be adopted by the Department of Housing, Buildings and Construction. The label must be legible and visible after installation. Such safety glazing labeling shall not be used on other than safety glazing materials."

(6) Change subsection 915.4 and the exceptions thereto to read as follows: "915.4 Duct and pipe shafts: In all buildings other than buildings of Use Group R-2, vertical pipes arranged in groups of two (2) or more which penetrate two (2) or more floors and occupy an area of more than one (1) square foot (0.093 m^2), and vertical ducts which penetrate two (2) or more floors, shall be enclosed by construction of not less than one (1) hour fire-resistance rating to comply with this section. All combustible ducts connecting two (2) or more stories shall be enclosed as indicated herein.

Exceptions:

1. In all buildings of Use Group R-2, vertical noncombustible ducts shall not be required to have a one (1) hour enclosure provided:

(a) the cross sectional area does not exceed thirty-five (35) square inches;

(b) the duct does not penetrate more than three (3) floors;

(c) the duct serves no more than one (1) dwelling unit and shall not join other ducts except above the top level for the purpose of utilizing a single roof penetration; and

(d) these ducts are restricted for use as a bathroom or kitchen exhaust, and combustion air supply and relief.

(7) Add the following language and NFPA Standards to Appendix A on page 496:

"These NFPA Standards are to be used for fire suppression requirements and design only, where referenced in a specific code requirement in the body of the Code."

BOCA Guide for Suppression Requirements for Specific Occupations

Installation of Sprinkler Systems	NFPA 13-87
Standard for Installation for Private Fire Service Mains and their Appurtenances	NFPA 24-1984
Aircraft Hangars	NFPA 409
Pyroxylin Plastics	NFPA 40C
Flammable Liquids	NFPA 36
Laboratories	NFPA 45
Fireworks	NFPA 44A
Gaseous Oxidizing Materials	NFPA 43C
L.P. Gas Storage	NFPA 58
Local Protective Signaling Systems	NFPA 72A-87
High Piled Storage in Excess of 12 ft. in height	NFPA 231
Rubber Tire Storage	NFPA 231D
Baled Cotton Storage	NFPA 231E
Rolled Paper Storage	NFPA 231F
Rangehoods	NFPA 96
Computer Rooms	NFPA 75
Archives and Record Centers	NFPA 232AM
L.P. Gas Storage and Handling	NFPA 59A
Explosion Prevention Systems	NFPA 69
Fur Storage	NFPA 81
Cooling Towers	NFPA 214
Marinas and Boatyards	NFPA 303
Library Stacks	NFPA 910

(8) Amend Article 30 as follows:

In subsection 3005.2, change the words, "Section 2805.4 through 2805.4.3" to read "Article 28, 815 KAR 20:090."

(9) Delete Article 28 in its entirety and substitute the following reference: "2800.1 General: See Kentucky State Plumbing Code for all the requirements for plumbing installations as set forth in Chapter 20, Title 815 of Kentucky Administrative Regulations. Informational copies are available from the Kentucky Division of Plumbing, U.S. 127 South, Frankfort, Kentucky 40601."

Section 7. Amend section 812 of the 1987 Edition of the BOCA National Building Code.

(1) Amend the first sentence of subsection 812.4.2 to read as follows: All doors equipped with latching or locking devices in buildings of Use Groups A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater than 100 shall be equipped with approved panic hardware."

(2) Create an exception to subsection 812.4.2 to read as follows: "Exception: Panic hardware for Use Group A3 is not required for the principal entrance/exit doors if (1) they are free-swinging; and (2) the calculated occupant load does not exceed 150; and (3) the latch/lock device is a thumb latch/lock or a key operated lock device in which the key cannot be removed from the side from which egress is to be made when it is locked."

Section 8. Amend Section 1016.1 to read as follows: "1016.1 Fire hydrants: Fire hydrants installed on private property as a part of a private fire protection system shall be located so as to meet the requirements of NFPA 24. Yard hydrant installation shall be coordinated with the responsible fire officials who shall not make recommendations which exceed the requirements of NFPA 24. Hydrants not addressed

by NFPA 24 shall conform to the standards of the administrative authority of the jurisdiction and the fire department. Hydrants shall not be installed on a water main less than six (6) inches in diameter."

Section 9. Amend Article 9 of the 1987 Edition of the BOCA National Building Code by creating certain portions thereof as follows:

(1) Create a new subsection 905.4 which shall read as follows: "905.4 Combustible Pipe: Combustible Pipe shall be permitted in all use groups and construction types where approved by Article 28 of this Code and the Kentucky State Plumbing Code."

(2) Create a new subsection 905.4.1 which shall read as follows: "905.4.1 Vertical Combustible Pipes: Vertical Combustible Pipes shall comply with Sections 905.4.2 and 915.4."

(3) Create a new subsection 905.4.2 which shall read as follows: "905.4.2 Combustible Pipe Penetrations: Combustible pipe penetrations of fire-resistance rated assemblies shall be acceptable when installed in accordance with an approved tested assembly utilizing combustible pipe penetrations. If there is no approved tested assembly with combustible pipe penetrations, noncombustible fittings shall be required where combustible pipe penetrations enter into or exit from the fire-resistance rated assembly."

Section 10. Create a new Section 2511 of the 1987 BOCA National Building Code entitled "Rangehoods" to read as follows: "2511 Rangehoods. Rangehoods in kitchen exhaust systems shall comply with the requirements of the Mechanical Code listed in Appendix A. The bottom edge of the hood shall be located at a height of not more than four feet (4') above the cooking surface."

Section 11. Amend subsection 625.1 by adding a sentence to read as follows: "625.1.1 The Cabinet for Human Resources, Department for Health Services shall regulate the design and construction of new facilities as related to water distribution and treatment systems for public swimming pools and the proper operation and maintenance of all such facilities. Their regulation is 902 KAR 10:120 and is titled 'Kentucky Public Swimming and Bathing Facilities Regulation'."

Section 12. Amend Appendix A, page 492 of the 1987 BOCA National Building Code under CABO by adding a reference to CABO-1987 Supplement.

Section 13. Amend Section 1012.2.9, Use Group S, by adding an Exception to read as follows: "Use Group S: In all buildings or structures or portions thereof of Use Group S, other than public garages which shall conform to Section 1012.2.11, when:

(1) Three (3) or more stories in height, of Use Group S-1, and more than 3,000 square feet (279 m^2) in area per floor; or

(2) Three (3) or more stories in height, of Use Group S-2, and more than 10,000 square feet (930 m^2) in area per floor; or

(3) Four (4) or more stories in height of Use Group S-1 or S-2 regardless of the area per floor.

EXCEPTION: For open parking structures, the required standpipe may be a dry without making a connection to the permanent water supply."

Section 14. Amend Table 806 of Article 8 by adding an Exception to Industrial Areas which reads as follows: "Exception: For purposes of determining jurisdiction under Sections 108 and 109, design professional seal requirements, and Article 33 coverage, use 200 gross."

Section 15. Amend subsection 304.1 to read as follows: "304.1 General: All buildings and structures, or parts thereof, other than those used for business training or vocational training, shall be classified in Use Group E which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities. Educational type uses with a total occupant load less than fifty (50) shall be classified as Use Group B. School buildings, or parts thereof, for business training or vocational training shall be classified in the same use group as the business or vocation taught."

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: June 16, 1988
FILED WITH LRC: July 14, 1988 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on Tuesday, August 23, 1988 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by August 18, 1988, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: No financial impact involved.

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork required.

(2) Effects on the promulgating administrative body: No financial impact involved.

(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 paperwork or reporting required.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method appropriate.

(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: No legislation in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.
(6) Any additional information or comments: These amendments would (1) limit the retroactive nature of application of this section in areas where likelihood of earthquake damages are expected to be less severe and (2) the Electrical Advisory Committee recommended acceptance of TIA #87-4 because the NEC was viewed to be too restrictive in this area.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation is not issued as the result of federal mandate. It is issued pursuant to Kentucky Statutory authority only.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: The proposed amendment to this regulation imposes no additional requirements or responsibilities on the regulated entity.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: The proposed amendment to this regulation imposes no additional requirements or responsibilities.

LOCAL MANDATE IMPACT

SUBJECT/TITLE: Building Code
LOCAL GOVERNMENT MANDATE: No
LEVEL OF IMPACT: City, County, Urban County Government
BUDGET IMPACT: No financial impact
MEASURE'S PURPOSE: These amendments would (1) limit the retroactive nature of the application of this section in areas where the likelihood of earthquake damages are expected to be less severe and (2) the Electrical Advisory Committee recommended acceptance of TIA #87-4 because the NEC was viewed to be too restrictive in this area.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal
(Proposed Amendment)

815 KAR 10:020. Fire safety standards.

RELATES TO: KRS Chapter 227
PURSUANT TO: KRS 227.300
NECESSITY AND FUNCTION: KRS 227.300 requires the Commissioner of Housing, Buildings and Construction to promulgate regulations to provide a reasonable degree of safety for human life and insure as far as practicable against fire loss. This regulation establishes the minimum requirements and controls which will be enforced by the State Fire Marshal's Office and local fire officials for the prevention of fire, explosion or panic arising from storage, handling or use of substances, materials or devices or the use of a building.

Section 1. Title and Scope. (1) This regulation shall constitute and may be cited as part of the "Standards of Safety;" and except as otherwise specifically provided, all buildings, structures, marine vessels, occupancies, installations, processes and conditions, the transportation by air, land or water, and the storage, handling or use of hazardous materials, shall conform to the standards adopted by this regulation. The State Fire Marshal may delegate in writing the authority and responsibilities of this section to the local fire marshal.
(2) These standards apply to existing buildings, structures, uses, practices, conditions, materials and equipment where safety to life or protection of the public interest requires their enforcement. Any such existing buildings, uses or conditions not in strict compliance with this regulation may be permitted, when in the sole discretion of the State Fire Marshal, they do not constitute a distinct hazard to life or the property of others.
(3) Upon written request from the owner of an existing building or structure the State Fire Marshal may issue a certificate of use and occupancy, provided there are no violations of law or orders of the building official or State Fire Marshal pending, and it is established that the alleged use of the building or structure has heretofore existed.
(4) While safety to life warrants as close compliance as possible with the "Standards of Safety," nothing contained herein shall apply to farm property, unless there are activities of an industrial nature sufficient to require consideration of the State Fire Marshal from a public life hazard standpoint.
(5) Where the purpose of any provision of the "Standards of Safety," as it pertains to safety to life and property from fire, can be fulfilled by other means the State Fire Marshal may modify the provision to permit certain specific alternatives, so long as substantially equivalent safety shall be maintained.
(6) Each application for an alternative shall be filed with the State Fire Marshal and shall be accompanied by such evidence, letters, statements, results of tests or other supporting information as may be required to justify the request. The State Fire Marshal shall keep a record of his actions on such applications and a signed copy of his decision shall be provided for the applicant.

Section 2. Definitions. Words defined in this section are intended only for use with the other sections of this regulation. Definitions set forth in any document referenced in this regulation shall be the acceptable definition for use of that document only. Where terms are not defined in this regulation, they shall have their ordinarily accepted meaning or such as the context may imply.
(1) "Alternate" means a system, condition, arrangement, materials or equipment submitted to the Fire Marshal as a substitute for a code requirement.
(2) "Authority having jurisdiction" means the Office of the State Fire Marshal.
(3) "Dwelling or private dwelling" means a single unit providing complete and independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.
(4) "Fire chief" means the authorized head of

a fire department that is recognized by the State Fire Marshal's Office.

(5) "Fire department" means a fire department recognized by the State Fire Marshal's Office.

(6) "Fire hazard" means any situation, process, material or condition which may cause a fire or explosion or provide a ready fuel supply to augment the spread or intensity of the fire or explosion which poses a threat to life or the property of others, and including any condition likely to result in collapse of some portion of the structure in case of such fire or explosion.

(7) "Fire hydrant" means a valved connection on a water supply system having one (1) or more outlets and which is used to supply hose and fire department pumpers with water.

(8) "Fire lane" means the road, path, or other passageway developed to allow the passage of fire apparatus through congested areas (both built-up and wild land).

(9) "Local fire marshal" means the enforcement officer of these standards as designated by the appointing authority of a local governmental jurisdiction. The fire chief may be designated as the enforcement officer by the State Fire Marshal where the appointing authority has not acted.

(10) "Marine vessel" means every description of water craft or other artificial contrivance used as a means of transportation in or on the water.

(11) "Private building" means a building, or that portion of a building, which is normally not frequented by, or open to, the public.

(12) "Process" means the manufacturing, handling, blending, conversion, purification, recovery, separation, synthesis or use, or any combination, of any commodity or material regulated by this code.

(13) "Single family dwelling" means one (1) unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which is not connected to any other unit or building.

(14) "Smoking" means a lighting, igniting, holding or possessing any lighted cigar, cigarette or pipe; or, carrying, throwing, or depositing any lighted or smoldering cigar, cigarette or pipe.

(15) "Smoking area" means a designated area where smoking is permitted within premises where smoking is generally prohibited.

(16) "State Fire Marshal" means the administrative head of the Division of Fire Prevention, Department of Housing, Buildings and Construction, Commonwealth of Kentucky.

Section 3. Relationship with Existing Laws. (1) The standards herein contained are to be used in conjunction with existing laws and nothing contained herein shall be construed as rendering other applicable laws invalid. However, if a conflict exists between a provision of this regulation or the codes adopted by reference herein and the Kentucky Building Code, the building code shall prevail.

(2) The planning, design and construction of new buildings and structures to provide egress facilities, fire protection, and built-in fire protection equipment shall be controlled by the building code listed in Section 4(2)(b) of this regulation; and any alternations, additions or changes in buildings required by the provisions of this code which are within the scope of the building code listed in Section 4(2)(b) of this regulation shall be made in accordance therewith.

(3) The State Fire Marshal shall have the authority to interpret and implement resolution of any conflict between provisions of this regulation and current regulations of the federal government.

(4) If any provision of this regulation is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, it shall not have the effect of voiding other provisions which may be determined to be legal; and it shall be presumed that this regulation would have been adopted without such invalid provisions.

(5) Except as may be deemed necessary by the State Fire Marshal for the general safety and welfare of the occupants and the public, buildings built under, and in full compliance with, the codes in force at the time of construction or alteration thereof, and that have been properly maintained and used for such use as originally permitted, shall be exempt from the requirements of this regulation pertaining to:

(a) Fire protection of structural elements;

(b) Exits required.

Section 4. Codes and Standards to be Enforced. (1) Whenever the State Fire Marshal or local fire marshal shall find in any structure or upon any premises dangerous conditions or materials as follows, he shall order such conditions or materials to be removed or remedied in accordance with the provisions of this regulation:

(a) Dangerous conditions which are liable to cause or contribute to the spread of fire in or on said premises, building or structure or endanger the occupants, thereof.

(b) Conditions which interfere with the efficiency and use of any fire protection equipment.

(c) Obstructions to or on fire escapes, stairs, passageways, doors or windows, liable to interfere with the egress of occupants or the operation of the fire department in case of fire.

(d) Accumulations of dust or waste material in air conditioning or ventilating systems or grease in kitchen or other exhaust ducts.

(e) Accumulations of grease on kitchen cooking equipment, or oil, grease or dirt upon, under or around any mechanical equipment.

(f) Accumulations of rubbish, waste, paper, boxes, shavings, or other combustible materials, or excessive storage of any combustible material.

(g) Hazardous conditions arising from defective or improperly used or installed electrical wiring, equipment or appliances.

(h) Hazardous conditions arising from defective or improperly installed equipment for handling or using combustible, explosive or otherwise hazardous materials.

(i) Dangerous or unlawful amounts of combustible, explosive or otherwise hazardous materials.

(j) All equipment, materials, processes or operations which are in violation of the provisions and intent of this code.

(2) Unless specifically covered by another provision of this regulation, the following nationally recognized codes, standards and regulations shall be deemed safe practice requirements, providing a reasonable degree of safety from fire loss and shall be fully

enforceable by the local and State Fire Marshal pursuant to this regulation:

(a) Code of Federal Regulations, 49, Transportation Parts 100 to 199, revised as of October 1, 1978, Parts 200 to 999 revised as of October 1, 1978, available from Superintendent of Documents, U.S. Government Printing Office, Washington, D. C., 20402, is filed herein by reference as if set forth at length.

(b) The Kentucky Building Code, as set forth in 815 KAR 7:010 and 7:020.

(c) The following National Fire Protection Association Pamphlets are filed herein by reference in their entirety. Any later editions of these pamphlets together with any unfiled pamphlets may be used for reference and guidance and as appropriate criteria for meeting the intent of this regulation.

National Fire Code - 1979 Edition

NFPA Pamphlet	Volume Number	Title and Edition
70	6	National Electric Code - 1978
70A	6	ANSI Standard Electrical Code for One and Two Family Dwellings - 1978
78	7	Lightning Protection Code - 1977
701	11	Standard Methods of Fire Tests for Flame Resistant Textiles and Films - 1977
702	11	Standard for Classification of the Flammability of Wearing Apparel - 1975
		Occupancy Protection
32	3	Standard for Dry Cleaning Plants - 1974
76A	7	Standard for Essential Electrical Systems for Health Care Facilities - 1977
87	8	Standard for the Construction and Protection of Piers and Wharves - 1975
101	9	Code for Safety to Life from Fire in Buildings and Structures - 1976
102	9	Standard for Assembly Seating, Tents and Air Supported Structures - 1978
		Flammable and Combustible Liquids
30	2	Flammable and Combustible Liquids Code - 1977
31	3	Standard for the Installation of Oil Burning Equipment - 1978
321	3	Standard on Basic Classification of Flammable and Combustible Liquids - 1976
327	3	Standard Procedures for Cleaning or Safeguarding Small Tanks and Containers - 1975
385	3	Recommended Regulatory Standard for Tank Vehicles for Flammable and Combustible Liquids - 1974
386	3	Standard for Portable Shipping Tanks - 1974
395	3	Standard for Storage of Flammable and Combustible Liquids on Farms and Isolated Construction Projects - 1977
512	11	Recommended Good Practices for Truck and Fire Protection - 1978
		Compressed and Liquefied Gases
50	4	Standard for Bulk Oxygen Systems at Consumer Sites - 1974
50A	4	Standard for Gaseous Hydrogen System at Consumer Sites - 1978
50B	4	Standard for Liquefied Hydrogen System at Consumer Sites - 1978
51A	4	Standard for Acetylene Cylinder Charging Plants - 1974
56B	4	Standard for Respiratory Therapy - 1976
56F	4	Standard for Nonflammable Medical Gas Systems - 1977
56G	4	Inhalation Anesthetics in Ambulatory Care Facilities - 1975
58	5	Standard for the Storage and Handling of Liquefied Petroleum Gases - 1979
59	5	Standard for the Storage and Handling of Liquefied Natural Gases at Utility Gas Plants - 1976
59A	5	Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG) - 1975

	Hazardous Materials & Processes	
61B	5	Standard for the Prevention of Fire and Dust Explosions in Grain Elevators and Bulk Grain Handling Facilities - 1973
61C	5	Standard for the Prevention of Dust Explosions in Flour and Feed Mills - 1973
61D	5	Standard for the Milling of Agriculture Commodities for Human Consumption - 1973
63	5	Fundamental Principles for the Prevention of Dust Explosions in Industrial Plants - 1975
65	5	Standard for the Processing and Finishing of Aluminum - 1975
481	3	Standard for the Production, Processing, Handling and Storage of Titanium - 1974
490	3	Code for the Storage of Ammonium Nitrate - 1975
495	4	Code for the Manufacturing, Transportation, Storage and Use of Explosive Materials - 1973
651	5	Standard for the Prevention of Dust Explosions in the Manufacture of Aluminum of Magnesium Powder - 1974
653	5	Standard for the Prevention of Dust Explosions in Coal Preparation Plants - 1971
654	5	Standard for the Prevention of Dust Explosions in the Plastic Industry - 1975
655	5	Standard for the Prevention of Sulfur Fires and Explosions - 1971
656	5	Standard for the Prevention of Dust Ignitions in Spice Grinding Plants - 1971
664	5	Standard for the Prevention of Dust Explosions in Woodworking and Wood Flour Manufacturing Plants - 1971
704	11	Identification of the Fire Hazards of Materials - 1975
	Hazardous Materials & Processes	
33	3	Standard for Spray Application Using Flammable and Combustible Materials - 1977
34	3	Standard for Dip Tanks Containing Flammable or Combustible Liquids - 1974
35	3	Standard for the Manufacture of Organic Coatings - 1976
36	3	Standard for Solvent Extraction Plants - 1978
40	3	Standard for the Storage & Handling of Cellulose Nitrate Motion Picture Film - 1974
40E	3	Storage of Pyroxylin Plastic - 1975
43A	3	Code for Storage of Liquids and Solid Oxydizing Materials - 1975
43C	3	Storage of Gaseous Oxidizing Materials - 1975
43D	3	Storage of Pesticides in Portable Containers - 1975
44A	3	Code for the Manufacture, Storage and Transportation of Fireworks - 1974
48	3	Standard for the Storage, Handling and Processing of Magnesium - 1974
51	4	Standard for the Installation and Operation of Oxygen Fuel Gas Systems for Welding and Cutting - 1977
51B	4	Standard for Fire Prevention in Use of Cutting and Welding Processes - 1977
56C	4	Safety Standard for Laboratories in Health-Related Institutions - 1973
57	5	Standard for Fumigation - 1973
61A	5	Standard for Manufacturing and Handling Starch - 1973
	Building Construction and Facilities	
37	3	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines - 1975
54	4	National Fuel Gas Code - 1974
56D	4	Standard for Hyperbaric Facilities - 1977
56E	4	Standard for Hypobaric Facilities - 1977

66	5	Standard for Pneumatic Conveying Systems for Handling Feed, Flour, Grain and Other Agricultural Dusts - 1973
69	5	Standard on Explosion Prevention Systems - 1978
75	7	Standard for the Protection of Electronic Computer/Data Processing Equipment - 1976
80	7	Standard for Fire Doors & Windows - 1977
82	7	Standard for Incinerators & Rubbish - 1977
45	3	Fire Protection for Laboratories Using Chemicals - 1975
85	7	Standard for Prevention of Furnace Explosions in Fuel Oil and Natural Gas-Fired Water-tube Boiler-Furnaces with One Burner - 1976
85B	7	Standard for Prevention of Furnace Explosions in Fuel Oil-Fired Multiple Burner Boiler-Furnaces - 1978
85E	8	Standard for Prevention of Furnace Explosions in Pulverized Coal Fired Multiple Burner Boiler-Furnaces - 1978
85F	8	Installation and Operation of Pulverized Fuel Systems - 1978
85G	8	Prevention of Furnace Implosions in Multiple Burner Boiler-Furnaces - 1978
86A	8	Standard for Ovens and Furnaces, Design Location and Equipment - 1974
86B	8	Standard for Industrial Furnaces, Design Location and Equipment - 1974
86C	8	Standard for Industrial Furnaces Using a Special Processing Atmosphere - 1977
86D	8	Industrial Vacuum Furnaces - 1978
90A	8	Standard for the Installation of Air Conditioning and Ventilating Systems - 1978
91	9	Standard for the Installation of Blower and Exhaust Systems for Dust, Stock, Vapor Removal or Conveying - 1973
96	9	Standard for the Installation of Equipment for the Removal of Smoke & Grease Laden Vapors from Commercial Cooking Equipment - 1978
211	9	Standard for Chimneys, Fireplaces and Vents - 1977
214	9	Standard on Water Cooling Towers - 1977
220	9	Standard Types of Building Construction - 1975
224	9	Standard for Homes and Camps in Forest Areas - 1974
241	9	Standard for Safeguarding Building Construction and Demolition Operations - 1975
251	9	Standard Methods of Fire Tests of Building Construction and Materials - 1972
255	10	Methods of Test of Surface Burning Characteristics of Burning Materials - 1972
252	9	Standard Methods of Fire Tests of Door Assemblies - 1976
256	10	Methods of Fire Tests of Roof Coverings - 1976
257	10	Standard for Fire Tests of Window Assemblies - 1975
703	11	Standard for Treatments of Buildings Materials - 1961

Transportation

88A	8	Standard for Parking Structure - 1973
88B	8	Standard for Repair Garages - 1973
302	10	Fire Protection Standard for Motor Craft (Pleasure & Commercial) - 1972
303	10	Fire Protection Standard for Marinas and Boatyards - 1975
306	10	Standard for the Control of Gas Hazards on Vessels to be Repaired - 1975
312	10	Standard for Fire Protection of Vessels During Construction, Repair & Lay-up - 1976

407	10	Standard for Aircraft Fuel Servicing Including Aircraft and Fueling Hose, Aircraft Fuel Servicing Tank Vehicles, and Airport Fixed Fueling Systems - 1975
408	10	Standard on Aircraft Hand Fire Extinguishers - 1973
409	10	Standard on Aircraft Hangars - 1975
415	10	Standard on Aircraft Fueling Ramp Drainage - 1977
416	10	Standard on Construction and Protection of Airport Terminal Buildings - 1975
417	10	Standard on Construction and Protection of Aircraft Loading Walkways - 1977
418	10	Standard on Rooftop Heliport Construction and Protection - 1973
498	4	Standard for Explosive Motor Vehicle Terminals - 1976
501A	10	Standard for Mobile Home Parks - 1977
501C	10	Standard for Recreational Vehicles (Travel Trailers, Camping Trailers, Truck Campers, Motor Homes) Installation of Plumbing, Heating and Electrical Systems - 1977
501D	10	Standard for Recreational Vehicle Parks - 1977
505	11	Fire Safety Standard for Powered Industrial Trucks - 1978

Fire Extinguishing Systems

11	1	Standard for Foam Extinguishing Systems - 1978
11A	1	Standard for High Expansion Foam Systems (Expansion Ratios from 100:1 to 1000:1) - 1976
11B	1	Standard on Synthetic Foam and Combined Agent Systems - 1977
12	1	Standard on Carbon Dioxide Extinguishing Systems - 1977
12A	1	Standard on Halongenated Fire Extinguishing Agent Systems - Halon 1301 - 1977
12B	1	Standard on Halongenated Fire Extinguishing Agent Systems - Halon 1211 - 1977
13	1	Standard for the Installation of Sprinkler System - 1978
13A	12	Recommended Practice for the Care and Maintenance of Sprinkler Systems - 1978
14	2	Standard for the Installation of Standpipe and Hose Systems - 1978
15	2	Standard for Water Spray Fixed Systems for Fire Protection - 1977
16	2	Standard for the Installation of Foam Water Sprinkler Systems and Foam Water Spray Systems - 1974
17	2	Standard for Dry Chemical Extinguishing Systems - 1975
18	2	Standard on Wetting Agents - 1972
20	2	Standard for the Installation of Centrifugal Fire Pumps - 1978
21	12	Standard for the Operation and Maintenance of National Standard Steam Fire Pumps - 1975
22	2	Standard for Water Tanks for Private Fire Protection - 1978
24	2	Standard for Outside Protection - 1977
26	12	Standard for the Supervision of Valves Controlling Water Supplies for Fire Protection - 1976
194	2	Standard for Screw Threads and Gaskets for Fire Hose Connections - 1974
196	2	Standard for Fire Hose - 1974
198	12	Standard for Care of Fire Hose (Including Couplings and Nozzles) - 1972

Portable Fire Extinguishers

10	1	Standard for the Installation, Maintenance and Use of Portable Fire Extinguishers - 1978
232	9	Standard for the Protection of Records - 1975
46	12	Storage for Forest Products - 1978

Section 5. Jurisdiction and Inspection. (1) The State Fire Marshal shall have jurisdiction over all property in the state and shall enforce

or aid in the enforcement of all laws relating to protection of the public from fire loss and the local fire marshal shall be responsible for the safety of places under his jurisdiction. The local fire marshal and the State Fire Marshal may establish by written agreement jurisdictional boundaries for enforcement of this regulation.

(2) The State Fire Marshal shall supervise and make periodic inspection of all property within the state and assist cities having fire departments in making like periodic inspections in such cities, except occupied private dwellings.

(3) The rights, powers and privileges of the State Fire Marshal shall not apply to single family dwellings; except that the State Fire Marshal may investigate the cause, origin and circumstances of fires for the proper detecting and suppressing arson and minimizing or preventing fire loss.

(4) The authorities of each county, city or other political subdivision shall adopt and enforce the fire safety standards as established herein.

(5) It shall be the duty of the local peace officers in each political subdivision to render all possible assistance in the enforcement of the provisions of the standards of safety for the protection of the public.

(6) The chief of a local fire department, whether paid or unpaid, is hereby authorized to inspect property, make written reports and order fire hazards to be remedied in accordance with Section 13 of this regulation.

Section 6. Permits and Stop Work Orders. (1) Permits required by this regulation will be predicated upon compliance with the requirements of this regulation and shall constitute written authority of the local fire marshal or State Fire Marshal to maintain, store, use, transport or handle hazardous materials or to conduct processes or install equipment used in connection with such activities. Such permits may be suspended or revoked if the requirements of this regulation are violated.

(2) Any permit issued pursuant to this regulation shall not supplant any other license or permit which may be required by other codes or laws.

(3) Whenever any installation that is subject to inspection prior to use is covered or concealed without having first been inspected, the State Fire Marshal may require by written notice that such work be exposed for inspection. The State Fire Marshal shall be notified when the installation is ready for inspection and the State Fire Marshal shall conduct the inspection within a reasonable time.

(4) When any construction or installation work is being performed in violation of the plans and specifications as approved by the State Fire Marshal, a written notice shall be issued to the responsible parties to stop work on that portion of the project which is in violation and no work shall be continued on that portion, nor may it be used until the violation has been corrected.

(5) No distributor or other person shall supply any hazardous materials to a tank or other equipment when the State Fire Marshal finds a hazardous condition after notification by the State Fire Marshal that the equipment or installation is not in compliance with this regulation.

Section 7. Local Permit Requirements. A permit shall be obtained from an authorized local fire marshal for the following:

(1) The storage or handling of Class I liquids in excess of one (1) gallon in any building of "residential occupancy," in excess of ten (10) gallons inside any other building, and in excess of 50 gallons outside of any building.

(2) Storage and handling of Class II liquids in excess of ten (10) gallons in any buildings of "residential occupancy," in excess of sixty gallons (60) inside any other building, and in excess of 120 gallons outside of any building.

(3) The storage and handling of Class III liquids in excess of 275 gallons inside any building, and in excess of 1,100 gallons outside of any building.

(4) Quantities of paints, oil, varnishes, and similar flammable liquids in excess of those given above, for use on the premises, stored for not more than thirty (30) days. For storage exceeding thirty (30) days, a state permit shall be required.

Section 8. State Permit Requirements for Flammable Liquids. A permit shall be obtained from the State Fire Marshal for all changes in construction, remodeling or operation of any refinery, bulk storage plant, distributing station, service station, or airports not under jurisdiction of Kentucky Building Code.

Section 9. State Permits for Liquefied Petroleum Gas. A permit shall be obtained from the State Fire Marshal prior to:

(1) The transportation, selling, storing for resale, or delivering of liquefied petroleum gases, or for engaging in the business of installing or servicing liquefied petroleum gas equipment; or for persons who actually perform such installations or servicing operations. Licenses issued under this section shall be in accordance with the provisions of KRS 234.120. Under this section licenses or permits are not required for storage or transportation in quantities of less than one (1) gallon where the gas is an integral part of a device for its utilization, or for use as a motor fuel while in the fuel tank of the motor vehicle.

(2) The construction or substantial remodeling of any plant or building containing an occupancy for which a license is required under KRS 234.120 relating to the storage and handling of liquefied petroleum gases. This requirement shall be a supplement to any Kentucky Building Code requirement.

Section 10. Self-service Stations. (1) Definitions.

(a) A "self-service station" means a location where all flammable and combustible liquids used as motor fuel are stored and dispensed from fixed approved dispensing devices into the fuel tanks of motor vehicles by persons other than the service station attendant, and may include multiple occupancy facilities available for the sale of other retail products.

(b) "Partial (split island) self-service" means a service station offering attendant service on one (1) or more pump islands and self-service on one (1) or more different pump islands. The partial self-service shall be offered at an island in close proximity to the office area of the building and in clear view of those attendants working in or about the service

station office or service area.

(2) Remote control required.

(a) In all self-service stations for flammable liquids there shall be a control room in which a remote control device is located. Said device must be located within arms reach of the attendant while he is maintaining the appropriate and adequate observation and control of dispensing activities.

(b) Emergency controls for partial self-service shall be installed and connected in series at two (2) or more locations remote from dispensing devices, including remote pumping systems, and easily accessible to the attendant. Such controls shall be capable to shut off the power to all dispensing devices in the event of an emergency.

(c) Emergency controls for partial self-service station shall be installed only at locations approved by the State Fire Marshal, and controls shall not be more than 100 feet from self-service dispensers. Operating instructions shall be conspicuously posted in the dispensing area.

(3) Attendant required at self-service station. There shall be not less than one (1) attendant on duty at all times while the station is open to the public and the self-service gasoline equipment is in use.

(a) An attendant shall supervise the dispensing of Class I liquids from within the confines of the control room or stand wherein the remote control device is located.

(b) The attendant shall refuse service to any customer who is smoking or who appears for any reason to be unable or incompetent to participate in the dispensing of a Class I liquid.

(4) Attendant required at partial self-service station.

(a) There shall be not less than one (1) attendant on duty at all times while the station is open to the public and the self-service gasoline dispensing equipment is in use. The dispensing area shall at all times be in clear view of the attendant and the placing or allowing of any obstacle to come between the dispensing area and the attendant shall be prohibited.

(b) The attendant shall refuse service to any customer who is smoking or who appears for any reason to be unable or incompetent to participate in the dispensing of a Class I liquid.

(c) Dispensing devices shall not be operated until authorized and/or activated by the attendant. The attendant shall not authorize the dispensing of a Class I liquid from the self-service dispensers until he has ascertained that a Class I liquid can be safely dispensed.

(5) Communication system.

(a) For self-service stations, a two (2) way communication system of the public address type shall be provided to facilitate direct and individual communication between the control room or stand, and each pump island.

(b) For partial self-service stations, an approved two (2) way electronic voice communications system shall be provided unless unaided voice communications may be readily heard under the conditions of operation considering distance, noise levels, obstructions and enclosures.

(6) Water for spillage for self-service stations and partial self-service stations.

(a) An operable water hose shall be connected and available for washing down spillage at all times the station is open for business.

(b) In the event of Class I liquid spillage, an attendant shall forthwith wash down said spillage, unless in so doing, a greater hazard would result.

(7) Locking dispensing units for self-service stations and partial self-service stations. Each dispensing device for Class I liquids at a remote control dispensing station shall be kept locked or otherwise maintained inoperable at all times that the station is unattended.

Section 11. (1) General fire safety regulations.

(a) Ordinary conduct requirements. No person shall knowingly permit any fire to spread so as to endanger the life or property of another or use or operate any device which may be a source of ignition unless proper removal of flammable material surrounding the operation is accomplished or such other reasonable precautions are taken to ensure against the starting and spreading of unfriendly fires.

(b) Reporting hazardous conditions. Any person, upon discovering evidence of spontaneous heating or other abnormal heating of any merchandise, commodity, cargo, shipment or other material of any kind in any building, marine vessel, appliance, apparatus, tank, or open stack or pile, or any person upon discovering or being apprised of any uncontrolled hazardous gas leak or hazardous material or combustible or flammable liquid spill, shall immediately notify the fire department and the State Fire Marshal.

(c) Maintaining a fire hazard. No person shall knowingly maintain a fire hazard.

(d) Carelessness with fire. No person shall deliberately, or through carelessness or negligence set fire to or cause the burning of any bedding, furniture, rug, curtain, drape or other combustible material, in such manner as to endanger the safety of any person or property.

(e) Notification of fire department of inoperative fire safety equipment. Persons owning, controlling, or otherwise having charge of any fixed fire extinguishing or fire warning system or standpipe system shall notify the fire department at any time such system or systems are inoperable or taken out of service. The fire department shall also be notified when service is restored.

(f) Disposal of hot and glowing materials. Hot ashes, cinders, or smoldering coals shall be placed in noncombustible receptacles. Such receptacles, unless resting on a noncombustible floor or on the ground outside the building, shall be placed on noncombustible stands, and in every case shall be kept at least two (2) feet laterally away from any combustible material, structure, or any exterior window opening.

(g) Barricading vacant buildings. Every person owning or having charge or control of any vacant building shall remove all combustible waste and refuse therefrom and lock, barricade or otherwise secure all windows, doors, and other openings in the building to prohibit entry by unauthorized persons. Exception: This section is not intended to apply to the temporary vacation of a building.

(h) Required access for fire apparatus. All premises which the fire department may be called upon to protect in case of fire and which are not readily accessible from public roads shall

be provided with suitable gates, access roads, and fire lanes so that all buildings and water supplies on the premises are at all times accessible to fire apparatus. A written document, agreeable to the local fire marshal and for the benefit of the jurisdiction, shall be required for emergency access over all fire lanes. The designation, maintenance and marking of fire lanes on private property shall be accomplished as specified by the local fire marshal. The designation, maintenance and marking of fire lanes on public ways shall be accomplished by the local jurisdiction on recommendation of the local fire marshal. It shall be unlawful for any person to park a motor vehicle on, or otherwise obstruct, any fire lane. It shall be unlawful for any person to park a motor vehicle within ten (10) feet on either side of a fire hydrant. Enforcement of designated fire lanes and fire hydrant clearance shall be the responsibility of the police force of the jurisdiction within which the lanes and hydrants are located.

(i) Smoking. Where conditions exist which make smoking a fire hazard on any premises, "No Smoking" signs shall be posted if directed by the local fire marshal. "No Smoking" signs shall be of a color, size, lettering, and location as approved by the local fire marshal. No person shall remove such "No Smoking" signs or light, or ignite or otherwise set fire to or smoke any cigar, cigarette, pipe, tobacco, or other form of smoldering substance, nor hold, possess, throw, or deposit any lighted or smoldering substance in any place where occasion or action would constitute a fire or life hazard. Nothing in this provision shall be construed as prohibiting smoking in areas, offices, or other rooms which have been designated by the local fire marshal safe smoking areas and have been approved for such purposes. This paragraph shall not apply to organizations having an established on-premises fire prevention program setting forth regulations requiring periodic fire prevention inspections and enforcing in-plant fire prevention rules. Such programs shall be coordinated with and approved by the fire marshal.

(j) Hazardous gas in balloons. No person shall use any flammable, oxidizing, toxic, corrosive, or reactive gas to inflate balloons. Air and inert gases, such as nitrogen and helium, are not prohibited for this purpose.

(k) Interference with fire protection equipment. No person shall render any portable or fixed fire extinguishing system or device or any fire warning system inoperable or inaccessible except as may be necessary during emergencies, maintenance, drills or prescribed testing.

(l) Portable heaters. Portable heaters shall be designed and located so that they cannot be easily overturned. The State Fire Marshal or local fire marshal shall prohibit use of portable heaters in occupancies or situations in which such use or operation would present an undue danger to life or the property of others. This provision shall not apply to portable heaters used in accordance with applicable provisions of NFPA codes and standards listed in Section 4 of this regulation.

(m) Precautions outside buildings. Internal combustion engines either stationary, portable or mobile, operating within grain, hay, grass or brush covered areas, shall be equipped with an effective means for arresting the issuance of burning carbon and sparks. This provision shall not apply to engines meeting applicable provisions of NFPA codes and standards as listed in Section 4 of this regulation and engines used to power lawn care equipment.

(2) Fumigation. The fire department shall be notified of fumigation operations in accordance with the provisions of Standard for Fumigation, NFPA Pamphlet No. 57.

(3) Combustible waste and refuse.

(a) Scope. No person owning or having control of any property shall allow any combustible waste material to accumulate in any area or in any manner so as to create a hazard to life or the property of others.

(b) Disposal of combustible waste. Combustible waste or refuse shall be properly stored or disposed of at the end of each working day, before vacating a building or premises, and whenever necessary to prevent unsafe conditions.

(c) Waste disposal sites. Fire extinguishing capabilities approved by the local fire marshal or State Fire Marshal shall be provided at waste disposal sites including but not limited to, fire extinguishers, water supply and hose, and earth moving equipment. Burning debris shall not be dumped at a waste disposal site except at a remote location on the site where fire extinguishing can be accomplished before compacting, covering or other disposal activity is carried out.

(d) Transportation of combustible waste and refuse. Vehicles or conveyances used to transport combustible waste or refuse over public thoroughfares shall have all cargo space covered and maintained sufficiently tight to ensure against ignition from external fire sources and scattering burning and combustible debris which may come in contact with ignition sources. Transporting burning waste or refuse is prohibited.

(e) Waste handling plants. All structures housing operations which are involved primarily in the handling, storage, or baling of combustible waste materials shall be equipped with an automatic fire extinguishing system installed in accordance with applicable provisions of NFPA codes and standards as listed in Section 4 of this regulation.

(4) Factors affecting egress.

(a) Means of egress shall be provided and maintained in accordance with the applicable provisions of this code and NFPA codes and standards as listed in Section 4 of this regulation.

(b) Storage on roofs and fire escape balconies. No person shall place or maintain upon any roof or fire escape balcony any materials or objects which may interfere with egress or fire department operations.

(c) Attachments to fire escapes and fire protection equipment. No person shall attach or fasten any rope, wire, cable or similar device, except approved standard equipment therefore, to any part of any fire escape, standpipe, auxiliary fire fighting equipment, appliance or other apparatus.

(d) Responsibility to prevent overcrowding. The manager and/or person in charge of the premises shall be responsible for preventing overcrowding as specified by the jurisdiction.

(e) Obstruction of aisles and passageways. No person shall block, impede, or obstruct any aisle, passageway, hallway, lobby, foyer, or

stairway leading to or from any entrance or exit required by law which will prevent, delay, hinder, or interfere with the free use of such passageway by any person. Special security or security devices which affect the exiting shall be subject to the approval of the state or local fire marshal.

(f) Failure to vacate. No person shall fail to leave any premises which are overcrowded when told to do so by the management of the premises or State Fire Marshal or authorized local fire marshal.

(5) Combustible decorations. No person shall install, maintain or use vegetation, bunting, cotton batting, plastic cloth, textile, excelsior, paper or other combustible material for the purpose of decoration in any building, premises, vehicle or marine vessel to which the public is admitted or invited unless such decorative materials have been made flame resistant with an approved flame retardant materials or process. Textiles or paper adhered to walls or ceilings (not free hanging) are considered interior finishes and shall be subject to the flame spread limitations for interior finishes. This provision shall not apply to materials used in a display or other material which is limited in quantity and approved by the State Fire Marshal for such use.

(6) Disposal of rubbish. No accumulation of waste paper, grass, litter, combustible or flammable waste, or rubbish of any kind shall be permitted to remain in any court, yard, vacant lot, or open space, unless in bales or containers awaiting collection, and located at least ten (10) feet from an overhang, a combustible wall, or window or door opening, of any building. All weeds, grass, vines, or other growth which may be fired and thereby endanger property, shall be cut down and removed (other than by burning by the owner or occupant of the property).

Section 12. Fire Chiefs' Authority over Unsafe Property. (1) All property found by the fire chief to be especially susceptible to fire loss for want of repairs, lack of sufficient fire escapes, age, dilapidated condition or any other cause and all property, combustible or explosive matter or flammable materials likely to result in fire loss shall be deemed unsafe and a fire hazard. A vacant building with an opening at door or window shall be deemed especially susceptible to fire loss.

(2) If an unsafe condition is found in a building or structure, the fire chief shall serve on the owner, agent or person in control of the building or structure a written notice describing the property deemed unsafe and specifying the required repairs or improvements to be made to render the building or structure safe and secure. The order shall forthwith be conformed to by the owner of the property.

(3) The owner may appeal in writing to the commissioner within ten (10) days of the receipt of the order of the fire chief. The commissioner shall within twenty (20) days review the order and file his decision. Such decision shall approve, revoke or modify the order of the fire chief by agreement of the parties or the decision shall establish a formal hearing which shall result in such approval, revocation or modification. The order of the fire chief shall be stayed until the appeal is resolved.

(4) Upon refusal or neglect of the person to comply with the requirements of a proper order to abate the unsafe condition, the legal counsel of the agency or jurisdiction shall be advised of all the facts and he shall institute the appropriate action to compel the structure to be made safe and secure or be taken down and removed, pursuant to KRS 227.390.

Section 13. Administration and Enforcement. (1) Any person failing, refusing or neglecting to comply with this regulation shall be subject to the applicable civil, criminal and administrative remedies stated in KRS Chapter 227.

(2) The local fire marshal and/or the fire chief shall report all new construction subject to the Kentucky Building Code, of which they are aware, to the appropriate building official.

(3) Whenever the state or local fire marshal finds that any property within his or her jurisdiction is not safe as to fire loss or that the practices or methods of construction or operation, or processes or materials employed or used in connection therewith do not afford adequate protection from fire loss under the terms and conditions of this regulation and the codes adopted by reference herein, he or she shall order that additions, improvements, repairs or changes be made and such equipment provided or action taken as will reasonably render the property safe. Compliance with applicable current National Fire Protection [Prevention] Association standards and recommended practices shall be deemed safe practices.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: July 8, 1988
FILED WITH LRC: July 14, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on Tuesday, August 23, 1988 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by August 18, 1988, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: No financial impact involved.

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

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No financial impact involved.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No

paperwork or reporting required.
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative appropriate.
(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: No legislation in conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.
(6) Any additional information or comments: This amendment is being submitted to correct typographical errors and oversights recently discovered.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation is not issued as the result of federal mandate. It is issued pursuant to Kentucky Statutory authority only.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: The proposed amendment to this regulation imposes no additional requirements or responsibilities on the regulated entity.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: The proposed amendment to this regulation imposes no additional requirements or responsibilities.

LOCAL MANDATE IMPACT

SUBJECT/TITLE: Fire Safety Standards
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE: Fire Safety Standards enforced by the State Fire Marshal
LEVEL OF IMPACT: City, County, Urban County Government
BUDGET UNIT IMPACT: No financial impact
MEASURE'S PURPOSE: This amendment is being submitted to correct typographical errors and oversights recently discovered.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:060. Quality and weight of materials.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to quality and weights of materials that will be used in the installation of plumbing systems.

Section 1. Materials, Quality of. All materials used in any drainage or plumbing system or part thereof, shall be free of defects.

Section 2. Label, Cast or Stamped. Each length of pipe, fitting, trap, fixture and device used in a plumbing or drainage system shall be stamped or indelibly marked with the weight or quality thereof, and, with the maker's mark or name.

Section 3. Vitrified Clay Pipe, Concrete Pipe, Truss Pipe, Extra Heavy SDR 35 Sewer Piping, Polyethylene Sewer Piping, Polyethylene and Corrugated Polyethylene Subsoil Drainage Tubing.
(1) Vitrified clay pipe shall conform to ASTM Standard Specifications C-200.
(2) Concrete pipe shall conform to ASTM Standard Specifications C-14.
(3) Truss pipe shall conform to ASTM Standard Specifications D-2680-74. (Solid wall shall conform to ASTM Standard Specifications D-2751-74.)
(4) Extra heavy SDR 35 sewer piping shall conform to ASTM Standard Specifications D-3033-74 and D-3034-74.
(5) Polyethylene sewer piping shall conform to ASTM D-3350 and is limited for use between a septic tank and a distribution box or boxes.
(6) Polyethylene and corrugated polyethylene subsoil drainage tubing shall conform to ASTM Standard Specifications F-405-74 and shall bear the NSF seal of approval. No pipe or fittings shall be used unless the manufacturer of such material submits to the department a sample of the pipe and fittings that will be used along with an analysis of the material from a private testing laboratory approved by the department. Such a report must be submitted to the department on an annual basis as of July 1, of each year. Polyvinyl Chloride subsoil drainage tubing shall conform to ASTM D-2729. They shall have two (2) rows of three-fourths (3/4) inch holes within an arch of 120 degrees of circumference of the piping and shall be on four (4) inch centers. Such tubing shall be visibly marked with the name of the manufacturer and the commercial standard number at ten (10) feet intervals.

Section 4. Cast-iron Pipe. (Hub and Spigot and No-hub). (1) Extra heavy. Extra heavy cast-iron pipe and fittings shall conform to ASTM A74-82.
(2) Service-weight. Service-weight cast-iron pipe and fittings shall conform to ASTM A74-82.
(3) Coating. Cast-iron pipe and fittings for underground use shall be coated with asphaltum, coal tar pitch or using a coating conforming to ASTM A-174

Section 5. Wrought-iron Pipe. All wrought-iron pipe shall conform to the latest ASTM "standard specifications for welded wrought iron pipe."

Section 6. Mild-steel Pipe. All steel pipe shall conform to the latest ASTM "standard specifications for welded and seamless steel pipe."

Section 7. Brass pipe; Copper Pipe; and Brass Tubing. Brass pipe, copper pipe and brass tubing shall conform respectively to the latest standard specifications of ASTM for "brass pipe, copper pipe, and brass tubing, standard sizes."

Section 8. Aluminum DWV Pipe with End Cap Components. All aluminum, drain, waste and vent pipe with end cap adapters shall conform to the requirements of American Society of Sanitary Engineering (ASSE) Standard No. 1045.

Section 9. Borosilicate Pipe. (1) Borosilicate pipe shall conform to the latest ASTM standards.

(2) Plastic pipe. All plastic piping used in a drainage, waste and vent system shall be schedule 40 or 80, Type 1, Grade 1, polyvinyl chloride compounds as defined and described in tentative specifications for rigid polyvinyl chloride (PVC) (ASTM Designation: D 1784-75), or Schedule 40 or 80 acrylonitrile-butadiene-styrene compound as defined and described in standard specification for acrylonitrile-butadiene-styrene (ABS) (ASTM Designation: D 1788-73). Pipe and fittings shall be produced and labeled in accordance with the provisions of Commercial Standard ASTM-D-2665-76, as amended, for PVC and ASTM-D-2661-76 for ABS, and both shall bear the NSF seal of approval. All pipe and fittings shall bear the ASTM designation together with the NSF seal, the manufacturer's identification and the size. The use of plastic pipe and fittings (PVC or ABS) as outlined herein shall be restricted to buildings where the soil and/or waste and vent stack do not exceed forty-five (45) feet in height, the vertical distance from the base of the stack to its terminus through the roof of the building.

(3) Stainless steel tubing. Stainless steel tubing for hot and cold water piping must be Grade H conforming to ASTM A268-68. Stainless steel tubing for the soil, waste and vent system must be either Grade G or H conforming to ASTM A-268-68.

(4) Polyethylene pipe. Polyethylene pipe used in acid waste systems shall conform to ASTM D-1204-62T.

(5) Polypropylene pipe. Polypropylene pipe used in acid waste systems shall conform to ASTM D-2146-65T.

Section 10. Lead Pipe, Diameter, Weights. (1) Lead soil, waste and vent pipes shall be in accordance with the standards of the Lead Industries Association and Federal Specifications WW-P-325, which are identical in substance, and shall not be lighter than the following weights:

Size Inside Diameter Inches	Commercial Designation "D" or "XL"		Wall Thickness Inches	Weight Pounds	Per Foot Ounces
1 1/2	D	XL	0.138	3	8
2	D	XL	0.142	4	12
3	D	XL	0.125	6	0
4	D	XL	0.125	8	0

(2) All lead bends and lead traps shall be of the weight known as extra heavy (XH) and shall have at least one-eighth (1/8) inch wall thickness. Weights for lead water service or supply pipes shall be according to the maximum working pressure in pounds per square inch as given in federal specifications WW-P-325.

Section 11. On roofing systems requiring integral flashings, the department will accept a flashing material which is part of the manufactured roofing system which is required by the roofing manufacturer in order to guarantee or warranty the roofing system.

Section 12. [11.] Sheet Lead. Sheet lead for shower pans shall weigh not less than four (4) lbs. per sq. ft. and shall weigh not less than three (3) lbs. per sq. ft. for vent pipe flashings.

Section 13. [12.] Sheet Copper or Brass. Sheet copper or brass shall not be lighter than No. 18 B. & S. gauge, except that for local and interior ventilating pipe it shall not be lighter than No. 26 B. & S. gauge.

Section 14. [13.] Threaded Fittings. (1) Plain screwed fittings shall be either cast-iron, malleable iron, or brass of standard weight and dimensions.

(2) Drainage fittings shall be either cast-iron, malleable iron, or brass, with smooth interior waterway, with threads tapped out of solid metal.

(3) All cast-iron fittings used in a water supply distribution shall be galvanized.

(4) All malleable iron fittings shall be galvanized.

Section 15. [14.] Caulking Ferrules. Caulking ferrules shall be of red brass and shall be in accordance with the following table:

Pipe Sizes Inches	Inside Diameter Inches	Length Inches	Minimum Weight Each
2	2 1/4	2 1/2	1 lb. 0 oz.
3	3 1/4	4 1/2	1 lb. 12 oz.
4	4 1/4	4 1/2	2 lb. 8 oz.

Section 16. [15.] Soldering Nipples. Soldering nipples shall be recessed red cast brass, iron pipe size. When cast, they shall be full bore and of minimum weight.

Section 17. [16.] Floor Flanges for Water Closets and Service Sinks or Similar Fixtures. Floor flanges shall either be hard lead, brass, cast iron, galvanized malleable iron, ABS or PVC. Hard lead and brass flanges shall be not less than one-eighth (1/8) inch thick. Cast iron and galvanized malleable iron shall be not less than one-fourth (1/4) inch thick and shall have a two (2) inch caulking depth.

Section 18. [17.] The use of lead (defined as solders and flux containing more than two-tenths (0.2) percent lead, and pipes and pipe fittings containing more than eight (8.0) percent lead) in the installation or repair of any public or private water system providing potable water for human consumption shall not be used.

Section 19. [18.] New Materials. Any material other than that specified in this code is prohibited unless such material is specifically approved by the State Plumbing Code Committee and the Department of Housing, Buildings and Construction as being equal to or better than the material specified herein. It shall be the responsibility of any person or company seeking the approval of a material not included in this code to prove to the satisfaction of such agencies that the material is equal to or better

than the material for which it is intended to replace.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: June 16, 1988
FILED WITH LRC: July 14, 1988 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on Tuesday, August 23, 1988 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by August 18, 1988, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: No financial impact involved.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No reporting or paperwork required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No financial impact involved.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No paperwork or reporting required.
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative appropriate.
(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: No legislation in conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.
(6) Any additional information or comments: This amendment creates a general rule allowing roof flashings consistent with guaranteed roofs.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation is not issued as the result of federal mandate. It is issued pursuant to Kentucky statutory authority only.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: The proposed amendment to this regulation imposes no additional requirements or responsibilities on the regulated entity.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: The proposed amendment to this regulation imposes no additional requirements or responsibilities.

LOCAL MANDATE IMPACT

SUBJECT/TITLE: Quality and Weight of Materials
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE: State plumbing code
LEVEL OF IMPACT: City, County, Urban County Government
BUDGET UNIT IMPACT: No financial impact
MEASURE'S PURPOSE: This amendment creates a general rule allowing roof flashings consistent with roofs guaranteed by the manufacturer.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:100. Joints and connections.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the methods that must be used in joining certain types of piping materials together as well as denoting the methods that must be used in securing plumbing fixtures to waste piping outlets.

Section 1. Water and Airtight Joints. All joints and connections shall be made permanently gas and water tight.

Section 2. Vitrified Pipe Joints; Concrete Pipe Joints; House Sewers - Combined Sewers. Joints in vitrified clay pipe shall conform to ASTM specification C-425. Joints in concrete pipe shall conform to ASTM specifications C-443. When it is necessary to use piping in other than standard lengths hot poured joints may be used. Joints between cast iron pipe and vitrified clay pipe or concrete pipe shall be made either of hot poured bitumastic compound or by a preformed elastomeric ring. The ring shall completely fill the annular space between the cast iron spigot and the vitrified clay or concrete pipe hub. Joints in pipe and fittings of not more than two (2) pipe sizes between vitrified clay, acrylonitrile-butadiene-styrene or polyvinyl chloride to cast iron pipe and fittings or the joining of either material to the other may be made with proper fittings by the use of a dispersion grade polyvinyl chloride ring conforming to ASTM C-443, C-425, C-594, C-564 and D-1829 or elastomeric polyvinyl chloride coupling.

Section 3. Caulked Joints. All caulk joints shall be firmly packed with oakum or hemp and shall have at least one (1) inch of pure lead properly caulked. No paint, varnish or putty will be permitted until tests have been performed.

Section 4. (1) Screw joints. All screw joints shall be American Standard screw joints and all burrs or cuttings shall be removed.

(2) Mechanical joint couplings for hot and cold water. Mechanical joint couplings for hot and cold water may be used above ground provided the couplings are galvanized and the gaskets conform to ASTM D-735-61, grade N-R-615 BZ.

(3) Mechanical joint couplings for storm water piping. Mechanical joint couplings for storm water piping may be used above ground provided the couplings are either black iron or galvanized and the gaskets conform to ASTM D-735-61, grade N-R-615 BZ.

(4) Joints in PVC and ABS Schedule 40 or 80 pipe and fittings. Joints in polyvinyl chloride schedule 40 or 80 pipe and fittings shall be solvent welded joints and shall conform to ASTM D-2665-69. Joints in acrylonitrile-butadiene-styrene pipe and fittings shall be solvent welded joints and shall conform to ASTM D-2661-69. Acrylonitrile-butadiene-styrene and polyvinyl chloride sewer piping that conforms to ASTM 3033 and 3034 shall be joined by solvent cement conforming to ASTM D-2661-69 for acrylonitrile-butadiene-styrene and ASTM D-2665-69 for polyvinyl chloride or with an elastomeric joint conforming to ASTM D-3212-73.

(5) Copper pipe, brass and stainless steel yubing joints. Copper pipe, brass and stainless steel tubing joints shall be soldered joints.

(6) Expansion. Every expansion joint shall be of approved type and its material shall conform with the type of piping in which it is installed.

(7) Brazed joints. Brazed joints shall be made by first cleaning the surfaces to be joined down to the base metal, applying flux approved for such joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.

(8) Elastomeric polyvinyl chloride coupling. Elastomeric polyvinyl chloride couplings may be used for connecting cast iron, vitrified clay, concrete, or plastic pipe or the combination of these pipe materials for use on house sewers and combination sewers only. This coupling shall be provided with #305 stainless steel clamps.

(9) Joints in corrugated polyethylene subsoil drainage tubing. Joints in corrugated polyethylene subsoil drainage tubing shall be made by slip joints using appropriate fittings.

(10) Joints in aluminum pipe shall be made by use of an adaptor ring (complete with mastic seal) over the cut end of the pipe and the use of an approved elastomeric sealing sleeve with a corrosion resistant clamping device.

Section 5. Cast Iron Soil Pipe Joints. (1) Joints in cast iron shall either be caulked, screwed, or joints made with the use of neoprene gaskets. Neoprene gaskets shall conform to either ASTM C-564-70 or CS 301-72. Joints that conform to commercial standard 301-69T shall have a stainless steel clamp.

(2) Cast iron coupling for joining hubless cast iron pipe shall consist of neoprene gasket conforming to ASTM C-564, cast iron clamps conforming to ASTM A-48 and stainless steel bolts and nuts conforming to ANSI B-18.2.1 and ANSI B-18.2.2.

Section 6. Borosilicate Joints. Joints and gaskets used for borosilicate pipe shall be made in a manner approved by the department.

Section 7. (1) Steel, brass and copper connections to cast iron pipe. Steel, brass and copper joints when connected to cast iron pipe shall be either screwed or caulked joints. All caulked joints shall be made by the use of a caulking spigot.

(2) PVC and ABS pipe and fitting connections to steel, brass, copper and cast iron pipe. Polyvinyl chloride and acrylonitrile-butadiene-styrene pipe and fitting connections to steel, brass, copper or cast iron pipe shall either be a screwed or caulk joint. Joints between Schedule 40 PVC or ABS pipe and cast iron pipe may be made by the use of a neoprene gasket conforming to ASTM C-564-70. All caulk joints shall be made with the use of either a polyvinyl chloride or acrylonitrile-butadiene-styrene or cast iron caulking spigot.

(3) Stainless steel tubing to cast iron pipe to galvanized steel pipe and to copper tubing. Stainless steel tubing to cast iron pipe shall be made by caulking spigot. Stainless steel tubing to galvanized steel pipe or copper pipe shall be made by the use of an adaptor.

(4) Joints in acid waste piping. Joints in vitreous glazed piping shall be made in a manner and of a material approved by the department. Joints in polyethylene and polypropylene piping must be made by the heat fusion process. Joints in polypropylene may also be made with a union joint. Joints in borosilicate pipe may be a stainless steel mechanical joint. Joints between silicon iron pipe may be either caulk joint or stainless steel mechanical joint.

Section 8. Lead Pipe. Joints in lead pipe or between lead pipe and brass or copper pipes, ferrules, soldering nipples, or trap, shall be full-wiped joints, with an exposed surface of the solder at each side of the joint of not less than three-quarters (3/4) of an inch. The minimum thickness of the thickest part of the joint shall be at least as thick as the material being used. In the event lead pipe is used for acid waste lines the pipe may be joined by burning.

Section 9. Lead Pipe to Cast Iron, Steel, or Wrought Iron Pipe. The joints between lead to cast iron, steel or wrought iron shall be made by means of a caulking ferrule or a soldering nipple.

Section 10. Wall or Floor Flange Joints. Wall or floor flange joints shall be made by using a lead ring or brass flange and shall be properly soldered.

Section 11. Soil Pipe, Iron Pipe, Copper Pipe; Tubular Trap Joints. Joints between soil pipe, iron pipe, copper pipe and tubular traps shall be made by the use of a heavy red cast brass adaptor. Tubular traps shall be soldered to the adaptor in a manner approved by the department.

Section 12. Slip Joints. Slip joints shall be permitted only on the inlet side of a trap.

Section 13. Unions. Unions shall be ground faced and shall not be concealed or enclosed.

Section 14. Roof Joints. The joint of the roof

shall be made water-tight by use of copper, lead or other approved flashing or flashing material. It shall extend not less than six (6) inches from the pipe in all directions and shall extend upward twelve (12) or more inches and turn down into the pipe. A hub flashing may be used provided it is constructed so it can be caulked into a hub above the roof.

Section 15. Increasers and Reducers. When different size pipes or pipes and fittings are to be concealed, the proper size increaser or reducer pitched at an angle of forty-five (45) degrees between the two (2) sizes, shall be used. This section does not apply to nonmetallic installations.

Section 16. Prohibited Joints and Connections. Any fitting or connection which has an enlargement chamber, or recess with a ledge shoulder, or reduction of the pipe area in the direction of the flow is prohibited.

Section 17. Hangers and Supports. All piping and fixtures shall be adequately supported by hangers or anchors securely attached to the building construction.

Section 18. Welded Pipe for Soil, Waste and Vent Systems. Mild steel pipe may be welded for a soil waste and vent system provided the welds are mechanically sound and the bore of the piping is smooth throughout its length. The welded piping shall be covered with a metallic continuous coating. Written permission shall be secured from the department for such a system.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: June 16, 1988
FILED WITH LRC: July 14, 1988 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on Tuesday, August 23, 1988 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by August 18, 1988, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: No financial impact involved.
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 reporting or paperwork required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No financial impact involved.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No paperwork or reporting required.
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative appropriate.
(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: No legislation in conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.
(6) Any additional information or comments: This amendment is submitted to clarify language currently in the regulation to meet previous intent of the language.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation is not issued as the result of federal mandate. It is issued pursuant to Kentucky Statutory authority only.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: The proposed amendment to this regulation imposes no additional requirements or responsibilities on the regulated entity.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: The proposed amendment to this regulation imposes no additional requirements or responsibilities.

LOCAL MANDATE IMPACT

SUBJECT/TITLE: Joints and connections.
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE: State plumbing code
LEVEL OF IMPACT: City, County, Urban County Government
BUDGET UNIT IMPACT: No financial impact
MEASURE'S PURPOSE: This amendment is submitted to clarify language currently in the regulation to meet previous intent of the language.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it.

Section 1. Quality. (1) The bacteriological and chemical quality of the water supply shall

comply with the regulations of the department and other governing authorities. Toxic materials shall be kept out of the potable water system.

(a) Piping conveying, and all surfaces in contact with potable water shall be constructed of nontoxic materials.

(b) Chemicals or other substances that could produce either toxic conditions, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, such systems.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with any material which will affect either the taste, odor, color, or potability of the water supply when the tank is placed in, or returned to, service. All interior tank coatings shall be from the list approved by the authority having jurisdiction.

(2) Potable water only shall be accessible to plumbing fixtures that supply water for drinking, bathing, culinary use or the processing of medicinal, pharmaceutical or food products.

(3) The potable water supply system shall be designed, installed, and maintained in such manner as to prevent contamination from nonpotable liquids, solids, or gases being introduced into the potable water supply through cross connections or any other piping connections to the system.

(4) Cross connections are prohibited except when and where, as approved by the authority having jurisdiction, suitable protective devices are installed.

(5) Cross connections between a private water supply and a public water supply shall not be made.

(6) When cross connection control devices are properly installed, they create a closed water system. A properly sized thermal expansion tank will be installed located in the cold water supply as near the water heater as possible.

(7) Backflow and back siphonage protection. Means of protection against backflow shall be as required in the following sections: 1, 7A through 7L in order of degree of protection provided. Backflow includes both back pressure and back siphonage.

(a) Air gap. Provides the best level of protection in all backflow situations. Minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be twice the effective opening of a potable water outlet, unless the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, in which case the minimum required air gap shall be three (3) times the effective opening of the outlet. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

MINIMUM AIR GAPS FOR PLUMBING FIXTURES

Fixture	Minimum Air Gap When not affected by near wall	Minimum Air Gap When affected by near wall
Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter	1	1 1/2
Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter	1 1/2	2 1/4
Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter	2	3
Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)	1	1 1/2
Effective openings greater than 1 inch	2 x diameter of effective opening	3 x diameter of effective opening

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps when spaced from inside edge of spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap when spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more such vertical walls or ribs has not been determined. In such cases, the air gap shall be measured from the top of the wall.

(b) Reduced pressure principle back pressure backflow preventer. Reduced pressure principle back pressure backflow preventers provide the best mechanical protection against backflow available, and may be considered equivalent to an air gap in most situations.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions only. These devices are manufactured assemblies consisting of two (2) independently acting check valves and including shutoff valves at each end, and petcocks and test gauges for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable

to back siphonage conditions only.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions only. When applicable, all atmospheric type vacuum breakers must be installed after the last cutoff valve on the water line. These devices may operate under normal atmospheric pressure when the critical level (CL) is installed at the required height in accordance with the following table:

CRITICAL LEVEL (CL) SETTINGS
FOR ATMOSPHERIC TYPE VACUUM BREAKERS

Fixture or Equipment	Method of Installation
Aspirators, ejectors, and and showers	CL at least 6 in. above flood level of receptacle
Bidets	CL at least 6 in. above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
Dental units	On models without built-in vacuum breakers: CL at least 6 in. above flood level rim of bowl.
Dishwashing machines	CL at least 6 in. above flood level of machine
Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line
Laundry machines	CL at least 6 in. above flood level of machine
Lawn sprinklers	CL at least 12 in. above highest sprinkler or discharge outlet
Steam tables	CL at least 12 in. above flood level
Tanks & vats	CL at least 6 in. above flood level rim or line

NOTE 1. Critical level (CL) is defined as the level to which the vacuum breaker may be submerged before backflow will occur. Where CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(f) Barometric loop: applicable only to back siphonage conditions. The use of a barometric loop is not acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. Backflow and back siphonage preventers shall be in an accessible location, preferable in the same room as the fixture or connection they protect. Devices may be installed in utility or service spaces. Devices and air gaps shall not be subject to flooding or freezing.

(h) Inspection of devices. Periodic inspections shall be made of all backflow and back siphonage preventers to determine whether they are in proper working condition. Reduced pressure principle back pressure backflow preventers shall be tested on at least an annual basis. Records should be kept on all such inspections.

(i) Approval of devices. Before any device for the prevention of backflow or back siphonage is installed, it shall have first been certified by a recognized testing laboratory acceptable to the plumbing official. Devices installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person or persons responsible for the maintenance of the system.

(j) Protection of potable water system. All potable water openings, outlets, and connections, except those serving residential units, shall be protected against backflow in accordance with one (1) of the following sections, 1(7A) through 1(7L).

(k) Degree of hazard. The protection required at any given outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard. Potential for contamination by toxic substances or disease-causing organisms.

2. Moderate hazard. Potential for contamination by nontoxic but objectionable substances.

3. Minor hazard. Potential for contamination by generally nontoxic, nonobjectionable substances, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. All openings and outlets shall be protected by an air gap between the opening and floor level rim whenever possible. The acceptable protection for various types of outlets or connections shall be as shown in the following table:

(See table on following pages)

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

Type of Connection	Degree of Hazard			Acceptable Protection				
					Backflow		Back siphonage	
	Severe	Moderate	Minor	Air Gap	Reduced Pressure Device	Double Check Valve Assembly	Pressure Type Vacuum Breaker	Atmospheric Type Vacuum Breaker
I. Connections subject to back pressure from:								
A. Pumps, tanks, and lines handling:								
1. Toxic substance	X			X	X			
2. Nontoxic subst.		X		X	X	X		
B. Boilers								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		
C. Gravity due to obvious site conditions subject to:								
1. Contamination by toxic substances	X			X	X			
2. Contamination by nontoxic subst.		X		X	X	X		
II. Water outlets and connections not subject to back pressure:								
A. Connection to sewer or sewage pump	X			X				
B. Outlet to receptacles containing toxic substances	X			X	X		X	X
C. Outlet to receptacles containing nontoxic substances		X		X	X	X	X	X
D. Outlet into domestic water tanks			X	Each case treated separately				
E. Flush valve toilets	X			X	X		X	X
F. Flush valve urinals		X		X	X		X	X
G. Outlets with hose attachments subject to contamination from:								
1. Toxic substances	X			X	X		X	X
2. Nontoxic subst.		X		X	X	X	X	X
H. Outlets to recirculating cooling tower:								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		

APPLICATION CHART

TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS	APPLICABLE STANDARDS
Reduced Pressure Principle Backflow Preventer For high hazard cross connections.	Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball type test cocks.	All cross connections subject to backpressure or back siphonage where there is a high potential health hazard from contamination. Continuous pressure.	Main Supply Lines Commercial Boilers Cooling Towers Hospital Equipment Processing Tanks Laboratory Equipment Waste Digesters Car Wash Sewerage Treatment	A.S.S.E. No. 1013 A.W.W.A. C506 FCCCHR of U.S.C. CSA B.64.4 Sizes 3/4 " - 10"

(A) Double Check Valve Assembly For low hazard cross connections.	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to back pressure where there is a low potential health hazard or nuisance. Continuous pressure.	Main Supply Lines Food Cookers Tanks and Vats Lawn Sprinklers Fire Sprinkler Lines Commercial Pools	A.S.S.E. No. 1015 A.W.W.A. C506 FCCCHR of U.S.C. CSA B.64.5 Sizes 3/4" - 10"
(B) Dual Check Valve Backflow Preventer For low hazard applications.	Two independent check valves. Checks are removable for testing.	Cross connections where there is a low potential health hazard and moderate flow requirements.	Post ground hydrants.	A.S.S.E. No. 1024 Sizes 3/4" & 1"
(A) Backflow Preventer with Intermediate Atmospheric Vent For moderate hazard cross connections in small pipe sizes.	Two independent check valves with intermediate vacuum breaker and relief valve.	Cross connections subject to back pressure or back siphonage where there is a moderate health hazard. Continuous pressure.	Boilers (Small) Cooling Towers (Small) Dairy Equipment Residential	A.S.S.E. No. 1012 CSA B.64.3 Sizes 1/2" & 3/4"
		Pump outlet to prevent backflow to carbon dioxide gas and carbonated water into the water supply system to beverage machines.	Postmix Carbonated Beverage Machine	Special Approvals
(B) Laboratory Faucet and Double Check Valve with Intermediate Vacuum Breaker In small pipe sizes for moderate to low hazard.	Two independent check valves with intermediate vacuum breaker and relief vent.	Cross connection subject to back pressure or back siphonage where there is a moderate to low health hazard.	Laboratory Faucets and Pipe Lines Barber Shop and Beauty Parlor Sinks	A.S.S.E. No. 1035 (N-LF9)
(A) Atmospheric Vacuum Breakers For moderate to high hazard cross connections.	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install at least 6" above fixture rim. Protection against back siphonage only.	Process Tanks Dishwashers Soap Dispensers Washing Machines Lawn Sprinklers	A.S.S.E. No. 1001 ANSI.A112.1.1 CSA B.64.1.1 FCCCHR of U.S.C. Sizes 1/4" - 3"
(B) Antisiphon Pressure Breakers For moderate to high hazard cross connections.	Spring loaded single float and disc with independent 1st check. Supplied with shutoff valves and ball type test cocks.	This valve is designed for installation in a continuous pressure potable water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	Laboratory Equipment Cooling Towers Comm. Laundry Machines Swimming Pools Commercial Plating Tanks Lg. Total & Urinal Facilities Degreasers, Photo Tanks Livestock Water Systems Lawn Sprinklers	A.S.S.E. No. 1020 CSA B.64.1.2 FCCCHR of U.S.C. Sizes 1/2" - 2"
(C) Hose Connection Vacuum Breakers For residential and industrial hose supply outlets.	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Hose Bibs Service Sinks Hydrants	A.S.S.E. No. 1011 CSA B.64.2 Size 3/4" Hose

NOTOXIC

Section 2. Water Required. (1) Every building equipped with plumbing fixtures and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In buildings used as residences or buildings in which people assemble or are employed, both hot and cold water shall be supplied.

Section 3. Water Service. (1) The water service piping to any building shall be not less than three-fourths (3/4) inch nominal pipe size but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures on all floors at all times.

(2) The underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth except they can be placed in the same trench provided:

(a) The bottom of the water service pipe at all points shall be at least eighteen (18) inches above the top of the sewer at its highest point.

(b) The water service pipe shall be placed on a solid shelf excavated at one (1) side of the common trench.

(c) The number of joints in the water service pipe shall be kept to a minimum.

Section 4. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of any other piping system.

(2) Piping which has been used for any other purpose than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing water closets and urinals, provided such water shall be piped in an independent system.

(a) When a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified by color markings and metal tags, or other appropriate method as may be approved by the governing authority. Each outlet on the nonpotable water distribution system which might be used for drinking or domestic purposes shall be permanently posted: DANGER - UNSAFE WATER. Each branch, fitting or valve shall be identified by the word - "NONPOTABLE WATER" either by signs or brass tags that are permanently affixed to the pipe, fittings, valves, etc. These identification markings shall not be concealed. Their maintenance shall be the responsibility of the owner.

(4) Any backflow device or cross-connection control device shall be approved by the department.

(5) Combination stop and waste valves, cocks, or hydrants shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) No private water supply shall be interconnected with any public water supply.

(7) Water used for cooling of equipment or in other processes shall not be returned to the potable water system. Such water shall be discharged into a drainage system through an air gap, or may be used for nonpotable purposes on written approval of the plumbing official.

Section 5. Water Supply to Fixtures. Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. Every water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of water closets, urinals or similar fixtures. When a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, such valves shall be set above the fixture in a manner so as to prevent any possibility of polluting the potable water supply by back siphonage. All such fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that will prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 6. Connections to Boilers. Potable water connections to boiler feed water systems in which boiler conditioning chemicals are introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where such chemicals are introduced. Boilers shall be equipped with a check valve in the cold water supply to the boiler.

Section 7. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent any contamination of the potable water supply system.

Section 8. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. No two and one-half (2 1/2) inch fixture branches are supplied from any one-half (1/2) inch pipe. (EXCEPTION: A combination of two (2) of the following fixtures may be connected utilizing the one-half (1/2) inch branch: a flush tank water closet, a lavatory and/or drinking fountain.)

(2) The following schedule shall be used for sizing the water supply piping to fixtures. The branch pipe to any fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and in every instance shall be brought to the floor or wall adjacent to the fixture. No concealed water branch pipe shall be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cuspidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res.)	1/2
Kitchen sink (com.	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4
Urinal (flush tank)	1/2

Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In all building supply systems in which devices or appurtenances are installed utilizing quick acting valves that cause noises due to water hammer, protective devices such as air chambers or approved mechanical shock absorbers shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) Where mechanical shock absorbers are installed, they shall be in an accessible place.

(b) Where mechanical devices are used, the manufactures specifications shall be followed as to location and method of installation.

[(4) Inadequate water pressure. Whenever water pressure from the source of supply is insufficient, fifteen (15) lb. or less to provide adequate flow at the fixture outlets, a booster pump and pressure tank or other approved means shall be installed in the building water supply system.]

[(5) Variable street pressures. When the source of water supply has a fluctuation, the water distribution system shall be designed for the minimum pressure.]

Section 9. Water Supply Pipes and Fittings, Materials. Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing conforming to ASTM B-586-73, fusion welded copper tubing conforming to ASTM B-447-72 and ASTM B-251, DWV welded brass tubing conforming to ASTM B-587-73, seamless stainless steel tubing, Grade H conforming to ASTM A-268-68, filament-wound reinforced thermosetting resin pipe conforming to ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold). Polyethylene (PE) plastic pipe conforming to ASTM D-2239-69, Poly(vinyl chloride) (PVC) plastic pipe conforming to ASTM D-1785-69, Chlorinated Poly(vinyl chloride) (CPVC) plastic pipe conforming to ASTM D-2846-70, Poly(vinyl chloride) (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 conforming to ASTM D-2241-84, polybutylene (PB) plastic pipe conforming to ASTM-D-3309-85b with brass, copper or celcon fittings, Quicktite connection using a celcon asetal copolymer, polybutylene cone and stainless steel ring, plastic pipe and fittings shall bear the NSF seal of approval. (EXCEPTION: Polybutylene pipe utilizing insert fittings of brass, copper or celcon shall use only copper clamping rings. Its use between the diverter spout of a tub and the shower nozzle is prohibited.) Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall conform to ASTM-D-3309-85b, and polybutylene plastic pipe conforming to ASTM 2662 for cold water applications only. Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system. All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or machine drawn. When Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or when it passes through a concrete floor it shall be wrapped with an approved material that will permit expansion or contraction. In no instance shall Polythylene, PVC or CPVC be used below ground under any house or building (refer also to 815 KAR 20:060, Section 17 and 815 KAR 20:073).

Section 10. Temperature and Pressure Control Devices for Shower Installations. Temperature and pressure control devices shall be installed on all shower installations that will maintain an even temperature and pressure and will provide nonscald protection. Such devices shall be installed on all installations other than in homes or apartment complexes.

Section 11. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be accessible and provided with a drip or drain valve. A pit or similar type installation is prohibited for a potable water supply shutoff valve.

(2) Pressure on gravity tanks shall have their supply lines valved at or near their source.

(3) Each family unit in a two (2) family or multifamily dwelling shall have each family unit controlled by an arrangement of shutoff valves which will permit each unit to be shutoff without interfering with the cold water supply to any other family unit or portion of the building.

(4) In all buildings other than dwellings, shutoff valves shall be installed which permit the water supply to each piece of equipment to be isolated without interference with the supply to other equipment.

(5) Each fixture or group of bath fixtures shall be valved and each lawn sprinkler opening shall be valved. In residential construction all fixtures except bathtub and showers shall be valved individually or in lieu each group of fixtures shall be valved.

(6) A group of fixtures or fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back to back on a common wall.

(7) The cold water branch to each hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and only serving this equipment.

Section 12. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water services shall be installed at least thirty (30) inches in depth.

Section 13. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on

all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. When a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor; when a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. Relief devices shall be installed on a pneumatic water system (see Section 16).

Section 14. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. Such approval shall be obtained before an installation is made.

Section 15. Domestic Solar Water Heaters. Domestic solar water heaters may have a "single wall heat exchanger" provided the solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or equal, and that the heat exchanger is pretested by the manufacturer to 450 PSI and that the water heater has a warning label advising that a nontoxic heat exchanger fluid must be used at all times and that a pressure relief valve is installed at the highest point in the solar panel.

Section 16. Domestic Water Heater Preheating Device. A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater. Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided. The water inlet to the heat exchange vessel shall be provided with a check valve, and adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) PSI above the maximum water pressure at the point of installation shall be provided if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device must be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device. Condensate drain water shall be piped in accordance to the plumbing code and in no instance shall it be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in areas subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump must be utilized.

Section 17. Tanks and Vats, below Rim Supply. Tanks and vats with potable water supply below the rim shall be subject to the following requirements:

(1) Where a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible.

SIZES FOR OVERFLOW PIPES FOR WATER SUPPLY TANKS

Maximum capacity of water supply line to tank	Diameter of over-flow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of over-flow pipe (inches ID)
0- 50 gpm	2	400- 700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200 gpm	3	Over 1000 gpm	8

(2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet closed.

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 18. Water Distribution for Fan Coil Units. When a domestic water heater is used for heating purposes through a fan coil medium, its temperature must not exceed 140 degrees Fahrenheit. It must utilize not less than three-fourths (3/4) inch Type M copper in its piping and its run shall not exceed 140 feet between the water heater and the heating unit (relates to 815 KAR 20:070).

Section 19. Fire Protection Systems. Fire protection systems using water from the potable water distribution system inside of buildings present special cross-connection prevention problems that require the use of protective devices. The devices used to connect such situations must be of the double check valve assembly as outlined in part 2 or 3 of the application chart.

Section 20. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home conforming to the regulations of the department.

(2) All materials, including pipes and fittings used for connections shall conform with the other sections of this code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space. The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded so as to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or equal with the intervening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which will encase both valve outlets but not prevent connection to the mobile home during freezing weather. A shutoff valve may be placed below the frost depth on the water service line, but in no instance shall this valve be a stop-and-waste cock.

Section 21. Conservation of Water (refer to 815 KAR 20:070, Section 14).

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: June 16, 1988
FILED WITH LRC: July 14, 1988 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on Tuesday, August 23, 1988 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by August 18, 1988, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: No financial impact involved.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional reporting or paperwork will be necessary.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No financial impact involved.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional paperwork involved.
(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative appropriate.
(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: No legislation in conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.
(6) Any additional information or comments: Enforcement of adequacy of the water pressure from a water utility is inappropriate for the Division of Plumbing and we have no mechanism to regulate it.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation is not issued as the result of federal mandate. It is issued pursuant to Kentucky Statutory authority only.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: The proposed amendment to this regulation imposes no additional requirements or responsibilities on the regulated entity.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: The proposed amendment to this regulation imposes no additional requirements or responsibilities.

LOCAL MANDATE IMPACT

SUBJECT/TITLE: Water supply and distribution
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE: State plumbing code
LEVEL OF IMPACT: City, County, Urban County Government
BUDGET UNIT IMPACT: No financial impact
MEASURE'S PURPOSE: Enforcement of adequacy of the water pressure from a water utility is inappropriate for the Division of Plumbing to enforce and we have no mechanism to regulate it.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:191. Minimum fixture requirements.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation incorporates many of the provisions which have been in effect for some time with regard to residential and public buildings. The department has revised the old regulation to make it easier to interpret. This regulation includes the requirements of the Department for Natural Resources and Environmental Protection as well as the Department for Human Resources and the Department of Justice. These inclusions simplify the plan process.

Section 1. (1) In buildings accommodating males and females it shall be presumed that the occupants will be equally divided between males and females unless otherwise denoted.
(2) The occupancy load factor used to determine the number of plumbing fixtures required shall be that denoted by Article 8, Section 806 of the 1988 edition of the Kentucky Building Code unless otherwise denoted.

Section 2. All types of buildings shall be provided with toilet rooms on each level or floor; however, where the department determines that separate facilities on each level or floor are unnecessary, toilet rooms on every other level or floor shall be sufficient.

Section 3. Toilet rooms for males and females shall be clearly marked.

Section 4. Toilet Floor Construction Requirements. Floors in toilet rooms providing facilities for use by the general public or employees [Toilet room floors in all public buildings and places of employment] shall be constructed of nonabsorbent materials. This requirement is not intended to restrict the use of wood floors. When more than one (1) water

closet and one (1) lavatory is installed, such a toilet room shall have at least one (1) floor drain and one (1) accessible hose bibb.

Section 5. Theaters, Assembly Halls, Libraries, Museums and Art Galleries. (1) A separate water closet and lavatory shall be provided for males and females in the stage area.

(2) A drinking fountain shall be provided in the stage and auditorium area and a drinking fountain shall be provided on each floor for each 500 persons or fraction thereof.

(3) Separate toilet rooms for males and females shall be provided as indicated in Section 2 of this regulation, as follows:

(a) One (1) water closet for each 100 males or females or fraction thereof; two (2) water closets for 101 to 200 males or females or fraction thereof; three (3) water closets for 201 to 400 males or females or fraction thereof; over 400 add one (1) water closet for each additional 500 males and one (1) for each additional 300 females.

(b) One (1) urinal for eleven (11) to 200 males; two (2) urinals for 201 to 400; three (3) urinals for 401 to 600; add one (1) urinal for each additional 300 males or fraction thereof.

(c) One (1) lavatory for up to 100 males or females; two (2) lavatories for 101 to 200, three (3) lavatories for 201 to 400; four (4) lavatories for 401 to 750; add one (1) lavatory for each additional 500 or less over 750.

(d) One (1) service sink or slop sink on each floor.

(e) The number of fixtures shall be based upon the maximum seating capacity or fixed seats. If fixed seats are not provided the basis for determining the capacity shall be one (1) person per each fifteen (15) square feet of area.

(4) In libraries, museums and art galleries separate toilet facilities for males and females shall be provided as indicated in Section 2, as follows:

(a) One (1) water closet and one (1) lavatory for each 100 females or fraction thereof.

(b) One (1) water closet and one (1) lavatory for each 200 males or fraction thereof.

(c) One (1) urinal for eleven (11) to 200 males; two (2) urinals for 201 to 400; 33 urinals for 401 to 600; add one (1) urinal for each additional 300 males or fraction thereof.

(d) One (1) service sink or slop sink on each floor.

(e) A drinking fountain shall be provided for each 500 persons or fraction thereof.

(f) The above number of fixtures shall be based upon the actual number of persons that can be accommodated.

(5) Urinals may be substituted for water closets for males, not to exceed one-third (1/3) of the required total number of water closets but in all cases the minimum number of urinals must be installed.

(6) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 6. School Buildings (relates also to 702 KAR 4:070 and 702 KAR 4:080). (1) A drinking fountain shall be provided on each floor and/or wing of a building and an additional drinking fountain shall be provided for each seventy-five (75) pupils or fraction thereof. The fountains shall be equipped with a protective cowl and the orifice shall be one (1) inch above the overflow rim of the fountain.

(2) Elementary through secondary level school buildings shall be provided with the following:

(a) Water closets for males shall be installed in the following proportions:

1. One (1) water closet for up to twenty-five (25) pupils.
2. Two (2) water closets for twenty-six (26) to 100 pupils.
3. One (1) water closet for each 100 pupils or fraction thereof in excess of 100.

(b) Urinals for males shall be installed in the following proportions:

1. One (1) urinal for up to twenty-five (25) pupils.
2. Two (2) urinals for twenty-six (26) to fifty (50) pupils.
3. Four (4) urinals for fifty-one (51) to 100 pupils.
4. Six (6) urinals for 101 to 200 pupils.
5. Eight (8) urinals for 201 to 300 pupils.
6. Ten (10) urinals for 301 to 400 pupils.
7. Twelve (12) urinals for 401 to 500 pupils.
8. One (1) urinal for each fifty (50) pupils or fraction thereof in excess of 500.

(c) Water closets for females shall be installed in the following proportions:

1. Two (2) water closets for up to twenty-five (25) pupils.
2. Three (3) water closets for twenty-six (26) to fifty (50) pupils.
3. Six (6) water closets for fifty-one (51) to 100 pupils.
4. Eight (8) water closets for 101 to 200 pupils.
5. Ten (10) water closets for 201 to 300 pupils.
6. Twelve (12) water closets for 301 to 400 pupils.
7. Fourteen (14) water closets for 401 to 500 pupils.
8. One (1) water closet for each forty (40) pupils or fraction thereof in excess of 500.

(d) Lavatories for male and female pupils shall be installed in the following proportions:

1. One (1) lavatory for each twenty-five (25) pupils or fraction thereof.
2. Two (2) lavatories for each fifty (50) pupils or fraction thereof.
3. One (1) lavatory for each fifty (50) pupils or fraction thereof over fifty (50).
4. Twenty-four (24) inches of sink or eighteen (18) inches of circular basin when provided with water outlet for each space, shall be considered equivalent to one (1) lavatory.

(3) One (1) service sink or slop sink shall be installed on each floor of a building.

(4) When detached relocatable classrooms are use, sanitary facilities will not be required, provided it is within a distance not to exceed thirty-five (35) feet from the main structure and there are sufficient fixtures in the main structure to serve the entire capacity of the school including the relocatable classrooms.

(5) Water closets for use in the above facilities shall be of the elongated bowl type with a split open front seat.

Section 7. Schools of Higher Education and Similar Educational Facilities. In schools of higher education and similar institutions there shall be installed:

(1) One (1) water closet for each fifty (50) males or one (1) water closet for each twenty-five (25) females or fraction thereof.

(2) One (1) lavatory for each fifty (50) males or females or fraction thereof.
(3) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof.
(4) One (1) urinal shall be provided for each thirty (30) males or fraction thereof. One (1) water closet less than the number specified may be provided for each urinal installed except that the number of water closets in such cases shall not be reduced to less than two-thirds (2/3) of the minimum specified.
(5) Water closets for use in above facilities shall be of the elongated bowl type with a split open front seat.

Section 8. Public Garages and Service Stations. Separate toilet rooms with at least a water closet and lavatory for females and a water closet, lavatory and urinal for males shall be provided. Water closets shall be of the elongated bowl type with a split open front seat.

Section 9. Churches. Sanitary facilities shall be provided in churches as follows:
(1) One (1) drinking fountain for each 400 persons or fraction thereof.
(2) One (1) water closet for each 150 females or fraction thereof.
(3) One (1) water closet for each 300 males or fraction thereof.
(4) One (1) urinal for each 150 males or fraction thereof.
(5) One (1) lavatory for each 150 persons or fraction thereof.

Section 10. Transient Facilities (relates also to 902 KAR 10:010). (1) Hotels and motels with private rooms shall have one (1) water closet, one (1) lavatory and one (1) bathtub or shower per room.
(2) In the public and service areas there shall be:
(a) One (1) water closet for each twenty-five (25) males or fraction thereof.
(b) One (1) water closet for each fifteen (15) females or fraction thereof.
(c) One (1) lavatory for each twenty-five (25) males or females or fraction thereof.
(d) One (1) urinal for eleven (11) to 100 males then one (1) for each additional fifty (50) or fraction thereof.
(e) One (1) bathtub or shower, if needed, for each ten (10) males or females or fraction thereof.
(f) One (1) drinking fountain for each seventy-five (75) or fraction thereof on each floor.
(g) One (1) service sink or slop sink on each floor.
(3) In residential-type buildings there shall be one (1) water closet, one (1) lavatory and one (1) bathtub or shower for each ten (10) males and each ten (10) females or fraction thereof.
(4) In rooming houses with private baths, they shall have one (1) water closet, one (1) lavatory and one (1) bathtub or shower per room.
(5) In rooming houses without private baths, there shall be:
(a) One (1) water closet for one (1) to ten (10) males and one (1) for each additional twenty-five (25) or fraction thereof.
(b) One (1) water closet for one (1) to eight (8) females and one (1) for each additional twenty (20) or fraction thereof.
(c) One (1) urinal for eleven (11) to 100 males, then one (1) for each additional fifty (50) or fraction thereof.
(d) One (1) lavatory for each ten (10) males or females or fraction thereof.
(e) One (1) bathtub or shower for each ten (10) males or females or fraction thereof.

Section 11. Dormitories: School, Labor or Institutional (relates also to 902 KAR 10:040). In dormitories there shall be installed:
(1) One (1) water closet for up to ten (10) males or one (1) water closet for up to eight (8) females; add one (1) water closet for each additional twenty-five (25) males or fraction thereof and one (1) water closet for each additional twenty (20) females or fraction thereof.
(2)(a) One (1) urinal for each twenty-five (25) males or fraction thereof. Over 150 males add one (1) fixture for each additional fifty (50) males or fraction thereof.
(b) Where urinals are provided for women, the same number shall be provided as for men.
(c) Where urinals are provided, they may be substituted for water closets, not to exceed one-third (1/3) of the required total number of water closets.
(d) Trough urinals shall be figured on the basis of one (1) urinal for each twenty-four (24) inches of length.
(3)(a) One (1) lavatory for one (1) to twelve (12) persons. Add one (1) lavatory for each twenty (20) males and each fifteen (15) females.
(b) Separate dental lavatories should be provided in community toilet rooms. A ratio of one (1) dental lavatory to each fifty (50) persons.
(4) One (1) bathtub or shower for each eight (8) persons. Over 150 persons add one (1) fixture for each twenty (20) persons. For womens' dormitories, there shall be installed additional bathtubs at the ratio of one (1) for each thirty (30) women.
(5) One (1) drinking fountain for each seventy-five (75) persons.
(6) One (1) laundry tray or clothes washer for each fifty (50) persons.
(7) One (1) service sink or slop sink for each 100 persons.

Section 12. Hospitals, Nursing Homes and Institutions (relates also to 902 KAR 20:031, 902 KAR 20:046, 902 KAR 20:056, 902 KAR 9:010). Sanitary facilities shall be provided on each floor level and shall conform to the following:
(1) Hospitals.
(a) Wards.
1. One (1) water closet for each ten (10) patients.
2. One (1) lavatory for each ten (10) patients.
3. One (1) tub/shower for each fifteen (15) patients.
4. One (1) drinking fountain for each 100 patients.
(b) Individual rooms: one (1) water closet, one (1) lavatory and one (1) tub/shower.
(c) Waiting rooms: one (1) water closet and one (1) lavatory.
(2) Nursing homes and institutions (other than penal).
(a) One (1) water closet for each twenty-five (25) males or fraction thereof.
(b) One (1) water closet for each twenty (20) females or fraction thereof.

(c) One (1) lavatory for each ten (10) persons or fraction thereof.
(d) One (1) urinal for each fifty (50) males.
(e) One (1) tub or shower for each fifteen (15) persons or fraction thereof.
(f) One (1) drinking fountain on each floor.
(g) One (1) service sink or slop sink on each floor.
(3) Institutions, penal.
(a) Cell.
1. One (1) prison type water closet.
2. One (1) prison type lavatory.
(b) Day rooms and dormitories.
1. One (1) water closet for each eight (8) inmates or fraction thereof.
2. One (1) lavatory for each eight (8) inmates or fraction thereof.
3. One (1) shower for each fifteen (15) inmates or fraction thereof.
4. One (1) urinal may be substituted for each water closet but in no instance shall the water closets be reduced to less than one-half (1/2) the number required.
5. One (1) drinking fountain per floor.
6. One (1) service sink or slop sink per floor.
(c) Toilet facilities for employees shall be located in separate rooms from those in which fixtures for the use of inmates or patients are located.
(d) One (1) drinking fountain on each floor.
(e) One (1) service sink or slop sink per floor.

Section 13. Workshops, Factories, Mercantile and Office Buildings. Separate toilet facilities shall be provided for males and females on each floor unless otherwise denoted.
(1) Workshops and factories: Sanitary facilities shall conform to the following:
(a) One (1) water closet for each twenty-five (25) males or fraction thereof, up to 100.
(b) One (1) lavatory for each twenty-five (25) males or fraction thereof, up to 100.
(c) One (1) urinal for eleven (11) to fifty (50) employees.
(d) Two (2) urinals for fifty-one (51) to 100 employees.
(e) One (1) lavatory for each twenty-five (25) females or fraction thereof, up to 100.
(f) One (1) water closet for each fifteen (15) females or fraction thereof up to 100.
(g) When in excess of 100 there shall be an additional water closet for each thirty (30) males and each thirty (30) females or fraction thereof; one (1) lavatory for each additional fifty (50) males and females or fraction thereof; one (1) urinal for each 100 males or fraction thereof.
(h) One (1) shower for each fifteen (15) persons exposed to skin contamination from irritating, infectious or poisonous materials.
(i) One (1) drinking fountain on each floor for each fifty (50) employees. In excess of 100 employees there shall be an additional drinking fountain on each floor for each additional seventy-five (75) persons.
(j) One (1) service sink or slop sink per floor.
(k) Individual sinks or wash troughs may be used in lieu of lavatories. Twenty-four (24) inches of sink or trough, when provided with water or eighteen (18) inches of circular basin shall be deemed the equivalent of one (1) lavatory.
(2) Mercantile.
(a) Sanitary facilities within each store shall be provided for employees and when more than five (5) persons are employed, separate facilities for each sex must be provided. EXCEPTION: For stores containing no more than 3,000 square feet of total gross floor area, employee facilities are provided within a centralized toilet room area or areas having a travel distance of no more than 500 feet.
(b) Sanitary facilities shall be provided for customers when the building contains 5,000 square feet or more. In malls and/or shopping centers, the required facilities, based on one (1) person per 100 square feet of total area, may be installed in individual stores or in a central toilet room area or areas, if the distance from the main entrance of any store does not exceed 500 feet and if accessible to physically disabled persons.
(c) Sanitary facilities shall be provided as stated in this section and shall conform as follows:
1. One (1) water closet for one (1) to 100 persons.
2. Two (2) water closets for 101 to 200 persons.
3. Three (3) water closets for 201 to 400 persons.
4. One (1) water closet for each 500 males, or 300 females, in excess of 400.
5. One (1) urinal for one (1) to 200 males.
6. Two (2) urinals for 201 to 400 males.
7. Three (3) urinals for 401 to 600 males.
8. One (1) urinal for each 300 males, or fraction thereof, over 600.
9. One (1) lavatory for one (1) to 200 persons.
10. Two (2) lavatories for 201 to 400 persons.
11. Three (3) lavatories for 401 to 700 persons.
12. One (1) lavatory for each 500 persons, or fraction thereof, in excess of 700.
13. One (1) drinking fountain on each floor for each 500 persons or fraction thereof.
14. One (1) service sink or slop sink per floor.
(3) Office buildings.
(a) Sanitary facilities within office buildings shall be provided for employees and when more than five (5) persons are employed, separate facilities for each sex must be provided. EXCEPTION: For office buildings containing no more than 3,000 square feet of total gross floor area, employee facilities are not required if adequate interior facilities are provided within a centralized toilet room area or areas having a travel distance of no more than 500 feet.
(b) Sanitary facilities shall be provided for customers when the office building or space contains 5,000 square feet or more. In office buildings, the required facilities, based on one (1) person per 100 square feet of total area, may be installed within the individual shops, or in a central toilet room area or areas if the distance from the main entrance of any office does not exceed 500 feet and if accessible to physically disabled persons.
(c) Sanitary facilities shall be provided as stated in this section and shall conform as follows:
1. One (1) water closet for one (1) to fifteen (15) persons.
2. Two (2) water closets for sixteen (16) to thirty-five (35) persons.
3. Three (3) water closets for thirty-six (36)

to fifty-five (55) persons.
4. Four (4) water closets for fifty-six (56) to eighty (80) persons.
5. Five (5) water closets for eighty-one (81) to 110 persons.
6. Six (6) water closets for 111 to 150 persons.
7. One (1) water closet for each forty (40) additional persons.
8. One (1) lavatory for one (1) to fifteen (15) persons.
9. Two (2) lavatories for sixteen (16) to thirty-five (35) persons.
10. Three (3) lavatories for thirty-six (36) to sixty (60) persons.
11. Four (4) lavatories for sixty-one (61) to ninety (90) persons.
12. Five (5) lavatories for ninety-one (91) to 125 persons.
13. One (1) lavatory for each forty-five (45) additional persons.
14. Whenever urinals are provided, one (1) water closet less than the number specified may be provided for each urinal installed except that the number of water closets in such cases shall not be reduced to less than seventy (70) percent of the minimum specified.
15. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof.

Section 14. Swimming Pool Bathhouses (relates also to 401 KAR 6:030). (1) Bathhouses for public swimming pools shall be divided into two (2) parts separated by a tight partition, each designated for "Males" or "Men" and the other "Females" or "Women."
(2) Sanitary facilities shall be provided in each bathhouse to serve the anticipated bather loading, as defined in 401 KAR 6:030, Section 7(5), and shall conform to the following:
(a) One (1) water closet for each seventy-five (75) males or fraction thereof.
(b) One (1) water closet for each fifty (50) females or fraction thereof.
(c) One (1) urinal for each seventy-five (75) males or fraction thereof.
(d) One (1) lavatory for each 100 persons or fraction thereof.
(e) One (1) shower per each fifty (50) persons or fraction thereof.
(f) One (1) drinking fountain per each 200 persons or fraction thereof.
(3) Fixture schedules shall be increased for pools at schools or similar locations where bather loads may reach peaks due to schedules of use. Pools used by groups or classes on regular time schedules of one (1) hour or less shall have one (1) shower for each six (6) swimmers, or one (1) shower for each ten (10) swimmers if the period is two (2) hours.
(4) Satisfactorily designed and located shower facilities, including warm water and soap, shall be provided for each sex. Showers shall be supplied with water at a temperature of no less than ninety (90) degrees Fahrenheit, and at a flow rate of at least three (3) gallons per minute. Thermostatic, tempering or mixing valves shall be installed to prevent scalding of the bathers.
(5) The requirement relating to bathhouse toilet room and shower facilities may be waived when such facilities are conveniently available to pool patrons within 150 feet from the pool.

Section 15. Park Service Buildings or Bathhouses (relates to 902 KAR 15:020). (1) Except for self-contained recreational vehicle parks, each park shall provide one (1) or more central service buildings containing the necessary toilet and other plumbing fixtures specified.
(2) Except for self-contained recreational vehicle parks, sanitary facilities shall be provided as follows:
(a) One (1) to fifteen (15) vehicle spaces.
1. Males. One (1) water closet, one (1) urinal, one (1) lavatory and one (1) shower.
2. Females. One (1) water closet, one (1) lavatory and one (1) shower.
(b) Sixteen (16) to thirty (30) vehicle spaces.
1. Males. One (1) water closet, one (1) urinal, two (2) lavatories and two (2) showers.
2. Females. Two (2) water closets, two (2) lavatories and two (2) showers.
(c) Thirty-one (31) to forty-five (45) vehicle spaces.
1. Males. Two (2) water closets, one (1) urinal, three (3) lavatories and three (3) showers.
2. Females. Two (2) water closets, three (3) lavatories and three (3) showers.
(d) Forty-six (46) to sixty (60) vehicle spaces.
1. Males. Two (2) water closets, two (2) urinals, three (3) lavatories and three (3) showers.
2. Females. Three (3) water closets, three (3) lavatories and three (3) showers.
(e) Sixty-one (61) to eighty (80) vehicle spaces.
1. Males. Three (3) water closets, two (2) urinals, four (4) lavatories and four (4) showers.
2. Females. Four (4) water closets, four (4) lavatories and four (4) showers.
(f) Eighty-one (81) to 100 vehicle spaces.
1. Males. Four (4) water closets, two (2) urinals, five (5) lavatories and five (5) showers.
2. Females. Five (5) water closets, five (5) lavatories and five (5) showers.
(g) When over 100 vehicle spaces are provided there shall be one (1) additional water closet and one (1) additional lavatory for each sex per additional thirty (30) spaces or fraction thereof; one (1) additional shower for each sex per additional forty (40) vehicle spaces or fraction thereof; and one (1) additional urinal for males per additional 100 vehicle spaces.

Section 16. Residential and Day Camp Sites (relates to 902 KAR 10:040). (1) Each residential and day camp site shall be provided with sanitary facilities for each sex as specified.
(2) Sanitary facilities shall be provided as listed below, except, however, day camps shall not be required to provide shower facilities.
(a) One (1) to eighteen (18) persons served.
1. Males. One (1) water closet, one (1) urinal, one (1) lavatory and one (1) shower.
2. Females. Two (2) water closets, one (1) lavatory and one (1) shower.
(b) Nineteen (19) to thirty-three (33) persons served.
1. Males. Two (2) water closets, one (1) urinal, two (2) lavatories and two (2) showers.
2. Females. Two (2) water closets, two lavatories and two showers.
(c) Thirty-four (34) to forty-eight (48)

persons served.
1. Males. Two (2) water closets, two (2) urinals, two (2) lavatories and three (3) showers.
2. Females. Three (3) water closets, two (2) lavatories and three (3) showers.
(d) Forty-nine (49) to sixty-three (63) persons served.
1. Males. Three (3) water closets, two (2) urinals, three (3) lavatories and four (4) showers.
2. Females. Four (4) water closets, three (3) lavatories and four (4) showers.
(e) Sixty-four (64) to seventy-nine (79) persons served.
1. Males. Three (3) water closets, three (3) urinals, three (3) lavatories and five (5) showers.
2. Females. Five (5) water closets, three (3) lavatories and five (5) showers.
(f) Eighty (80) to ninety-five (95) persons served.
1. Males. Four (4) water closets, three (3) urinals, four (4) lavatories and six (6) showers.
2. Females. Six (6) water closets, four (4) lavatories, and six (6) showers.
(g) When over ninety-five (95) persons are served, there shall be provided: One (1) additional water closet and one (1) additional lavatory for each twenty-five (25) persons or fraction thereof served; one (1) additional shower for each twenty (20) persons, or fraction thereof, served; one (1) urinal per fifty (50) additional males or fraction thereof.
(h) Water closets may be substituted for urinals when facilities may be used by both sexes.

Section 17. Retail Food Stores and Restaurants. Sanitary facilities shall be provided for employees. (relates to 902 KAR 10:020 and 902 KAR 45:005).
(1) Food stores.
(a) When in excess of five (5) persons of different sex are employed, separate facilities must be provided for the employees.
(b) Sanitary facilities shall be provided for customers when the building contains 5,000 square feet or more. In malls and/or shopping centers, the required facilities, based on one (1) person per fifty (50) square feet, may be installed in individual stores or in a central toilet room area or areas, if the distance from the main entrance of any store does not exceed 500 feet.
(c) 1. One (1) water closet for one (1) to 100 persons.
2. Two (2) water closets for 101 to 200 persons.
3. Three (3) water closets for 201 to 400 persons.
4. One (1) water closet for each 500 males or 300 females in excess of 400.
5. One (1) urinal for eleven (11) to 200 males.
6. Two (2) urinals for 201 to 400 males.
7. Three (3) urinals for 401 to 600 males.
8. One (1) urinal for each 300 males or fraction thereof, over 600.
9. One (1) lavatory for one (1) to 200 persons.
10. Two (2) lavatories for 201 to 400 persons.
11. Three (3) lavatories for 401 to 700 persons.
12. One (1) lavatory for each 500 persons or fraction thereof in excess of 700.
13. One (1) drinking fountain on each floor for each 500 persons or fraction thereof.
14. One (1) service sink, utility sink or curbed mop basin per floor as required.
(2) Restaurants.
(a) When in excess of five (5) persons of different sex are employed, separate facilities must be provided for the employees.
(b) In new establishments or establishments that are extensively altered or changed from another type occupancy to a restaurant, toilet facilities for each sex shall be provided and readily accessible for the use of both patrons and employees; provided, that carryout type food service operations shall be exempted from providing toilet facilities for the use of their patrons.
(c) 1. Two (2) water closets for one (1) to 100 persons.
2. Three (3) water closets for 101 to 200 persons.
3. Four (4) water closets for 201 to 300 persons.
4. One (1) water closet for each additional 200 persons or fraction thereof over 300.
(d) 1. One (1) urinal for eleven (11) to 200 males.
2. One (1) urinal for each additional 150 males or fraction thereof over 150.
(e) 1. One (1) lavatory for one (1) to 200 persons.
2. Two (2) lavatories for 201 to 400 persons.
3. Three (3) lavatories for 401 to 600 persons.
4. One (1) lavatory for each additional 200 persons or fraction thereof over 600.
(f) 1. One (1) drinking fountain for one (1) to 100 persons.
2. Two (2) drinking fountains for 101 to 500 persons or fraction thereof.
(g) When food is consumed indoors on premises, water stations may be substituted for drinking fountains.
(h) One (1) service sink, utility sink or curbed mop basin on each floor as required.
(i) Lavatories for hand washing shall be provided in the kitchen area, readily accessible to the employees. However, if the service or utility sink is placed in a location readily accessible to the employees as determined by the Cabinet for Human Resources, it may substitute for the lavatory.

Section 18. Temporary Facilities for Construction Projects. Separate sanitary fixtures shall be provided as scheduled below for both males and females:
(1) One (1) water closet per thirty (30) males or fraction thereof.
(2) One (1) urinal per thirty (30) males or fraction thereof.
(3) One (1) lavatory per thirty (30) males or fraction thereof.
(4) One (1) water closet per twenty (20) females or fraction thereof.
(5) One (1) lavatory per twenty (20) females or fraction thereof.
(6) One (1) drinking fountain per 100 persons or fraction thereof.

Section 19. The fixture requirements of this regulation are also compiled in table form which is available from the Division of Plumbing, Department of Housing, Buildings and Construction, The 127 Building, Frankfort, Kentucky 40601.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: June 16, 1988
FILED WITH LRC: July 14, 1988 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on Tuesday, August 23, 1988 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by August 18, 1988, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: No financial impact involved.
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 reporting or paperwork required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No financial impact involved.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No paperwork or reporting required.
(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenue anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method appropriate.
(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: No legislation in conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.
(6) Any additional information or comments: This amendment will eliminate the requirement for nonabsorbent floor in some public building toilet rooms.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation is not issued as the result of federal mandate. It is issued pursuant to Kentucky Statutory authority only.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: The proposed amendment to this regulation imposes no additional requirements or responsibilities on the regulated entity.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: The proposed amendment to this regulation imposes no additional requirements or responsibilities.

LOCAL MANDATE IMPACT

SUBJECT/TITLE: Minimum fixture requirements
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE: State plumbing code
LEVEL OF IMPACT: City, County, Urban County Government
BUDGET UNIT IMPACT: No financial impact
MEASURE'S PURPOSE: This amendment will eliminate the requirement for nonabsorbent floor in some public building toilet rooms.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Food and Sanitation
(Proposed Amendment)

902 KAR 10:081. Construction standards for components of on-site 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 on-site 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 on-site 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 on-site 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.]
(1) [(2)] "Approved" means that which has been considered acceptable to the cabinet.
(2) [(3)] "Cabinet" means the Cabinet for Human Resources and includes its authorized agents.
(3) "Component" means any device used in the construction, installation or alteration of an on-site sewage disposal system which forms an integral part of that system, and is necessary to its proper operation and maintenance. It includes, but is not limited to:
(a) Sewage pretreatment units, holding tanks, grease traps, pump or dosing tanks, and necessary equipment and appurtenances;
(b) Distribution boxes, alternating valves, filters, and similar devices; and
(c) Piping, fittings, valves, and leaching chambers.
(4) "Effluent" means the liquid discharge of a septic tank or other sewage pretreatment unit.
(5) "Gravelless pipe" means large diameter perforated piping designed for use in lateral

field trenches without the use of trench rock or gravel fill material. Such pipe includes a mandatory overwrap or encasing of synthetic filter material meeting specific criteria.

(6) "Grease" means fats or oils of animal, vegetable, or mineral origin, separately or in colloidal or dissolved states in combination with soaps, detergents, and/or food particles.

(7) "Grease trap" means a component designed to separate grease and its constituents from the wastewater stream, provide for storage of separated grease, and discharge the remaining wastewater for treatment.

(8) [(5)] "Lateral field" means the area in which [lateral lines are installed or can be used to generally describe] the subsurface soil absorption [portion of the subsurface sewage treatment and disposal] system is installed and is a general term for the system itself.

[(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.]

(9) [(7)] "Low pressure pipe system" means an on-site sewage disposal system consisting of a sewage pretreatment [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.

(10) "Leaching chamber" means a specially designed component for use in lateral field trenches or beds, with or without the use of trench rock or gravel fill material, which forms an open bottomed chamber or cavern over the subsurface soil absorption surface, and which interlocks with other such chambers to obtain the necessary absorption surface area.

(11) [(9)] "On-site 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. The common terms "on-site sewage system" or "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:

(a) A conventional system consisting of a sewage pretreatment unit(s), distribution box(es), and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit(s), necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of conventional, modified or alternative design; and

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil absorption system, or connection to a municipal sewer.

(12) [(8)] "Person" means any individual, firm, association, organization, partnership, business trust, corporation, [or] company or governmental unit.

(13) [(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.]

(14) "Sewage pretreatment unit" means a water-tight sewage treatment structure designed and constructed to receive raw sewage, separate solids from liquids, digest organic matter through a period of retention, and allow clarified effluent to discharge to a subsurface soil absorption system. Such pretreatment units fall into three (3) basic categories:

(a) Septic tanks - which rely predominantly on anaerobic bacterial action for treatment;

(b) Aerobic units - which introduce atmospheric air into the sewage to promote treatment by aerobic bacteria; and

(c) Comination units - which provide treatment through both anaerobic and aerobic bacterial action and/or mechanical filtering, ozonation or ultraviolet irradiation.

(15) "Subsurface soil absorption system" means that portion of an on-site sewage disposal system which accepts effluent from a sewage pretreatment unit(s) for further treatment by microbial, plant and animal life within the soil, as well as treatment by filtration, chemical decomposition and bonding within the soil itself, and consists of:

(a) Devices, components, and piping to transport effluent under pressure or by gravity flow, and distribute the effluent to the soil absorption surfaces;

(b) Trenches, beds, chambers, mounds, lagoons, artificial marshes, etc., separately or in combination, which form or enclose the soil absorption surfaces;

(c) Rock, gravel, or other fill materials required within the system, including barrier materials, and fill soil within or over the system; and

(d) Artificial drainage systems, and other necessary site or soil modifications.

Section 3. Approval Procedures. (1) All commercial manufacturers and suppliers of materials, components, and equipment designed or intended for use in the construction of on-site 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 Pretreatment Units [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 side walls 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 side wall 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 short-circuiting of tank contents.

(h) In lieu of concrete baffles, sanitary tees or other baffle devices of corrosion resistant materials (fiberglass, plastic[, or cast iron]) may be used as long as joints are properly sealed, acceptable attachment methods are used, 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, or 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 four (4) [six (6)] inches.

(b) Concrete block [or brick] septic tanks shall have a minimum wall thickness of at least eight (8) [six (6)] inches when the design volume is less than 1,000 gallons and a minimum wall thickness of at least ten (10) [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, and provided with acceptable reinforcing within all walls.

(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 touchup 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 Pretreatment [Treatment] Units. (1) Precast concrete tank. All precast concrete tank aerobic pretreatment [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 side wall 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 dislodgment 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 or 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 pretreatment [treatment] units shall comply with the construction requirements listed in Section 4(1)(a), (e), (f), (j), and (3)(a) of this regulation, subsection (1)(b) and (c) of this section, 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 pretreatment [treatment] units shall comply with the construction requirements listed in Section 4(1)(a), (e), (f) and (j) of this regulation, and subsection (1)(b) and (c) of this section, 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 pretreatment [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 internal or external to the aerobic pretreatment tank shall 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 pretreatment [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 pretreatment [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 start-up 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 and holding 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 antiflotation 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 or visible alarm system within the structure served by the dosing or holding tank, shall be installed in such tanks and calibrated to activate [sound] an alarm whenever the tank liquid level reaches eighty-five (85) percent of capacity. Such alarms shall be connected to a separate electrical circuit, and visible systems shall be located in an area of high pedestrian traffic.

(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 mercury float 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. Grease Traps. (1) All grease traps 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) Inlet baffle, sanitary tee or baffle device shall extend two (2) to no more than four (4) inches below the liquid level of the trap;

(b) Outlet baffle, sanitary tee or baffle device shall extend downward to eighty (80) percent of the total liquid depth of the trap;

(c) The minimum liquid depth shall be twenty-four (24) inches with a maximum depth of forty-eight (48) inches;

(d) Grease traps are exempted from the 2:1 to 3:1 length to width ratio requirements in Section 4 of this regulation; and

(e) A manhole or manholes shall be provided on each grease trap to allow free access for servicing all areas of the trap. Such manhole(s) shall have a minimum dimension of eighteen (18) inches measured at the bottom edge of the manhole opening into the trap, and manhole risers shall be used to extend the manhole(s) to grade.

Section 8. [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, side walls, 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 9 [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 and level type design standards.

(a) Outlet holes or knockouts in equal flow and level 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 side wall or endwall. When plastic or neoprene connectors are cast into the box, this requirement may be waived. 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 side walls in the outlet portion of the box. At the inlet portion of equal flow boxes [the box] a minimum distance of eight (8) inches on centers shall be maintained between outlet holes and the side wall 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 shall be provided with [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 shall be provided. 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 two and one-half (2 1/2) [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 side walls.

(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 one (1) inch [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 side wall and supply line outlet side wall to minimize the risk of short-circuiting 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 or other acceptable means, 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 9. [8.] Piping, Fittings, and Connectors. (1) Nonperforated pipe - gravity flow usage.

(a) All nonperforated piping used for gravity flow carriage of effluent between septic tanks in series, septic tanks or other pretreatment [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 nonperforated piping shall be of a minimum internal diameter of four (4) inches, except that such piping used between distribution devices and lateral trenches or beds may be reduced to a minimum internal diameter of two (2) inches with the use of approved reducer coupler fittings.

(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) Nonperforated pipe - pressure usage.

(a) All nonperforated piping used for pressurized carriage of effluent between dosing or pumping and distribution [and/]or alternating devices shall be of at least 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 semirigid 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 a minimum one-fourth (1/4) [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 to five (5) feet 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 - gravelless pipe design.

(a) All eight (8) and ten (10) inch I.D. corrugated polyethylene pipe used in gravelless pipe lateral fields shall meet the requirements of ASTM F667.

(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 ASTM F667. In addition, a painted or other clearly marked line shall be placed on each section to denote the top of the pipe.

(c) All gravelless piping shall be encased, at the point of manufacturer, with a spun bonded nylon filter wrap, or equivalent, meeting or exceeding the performance criteria below:

Physical Properties	Nominal Values	Minimum Values
Weight, oz./sq.yd. (ASTM D3776-79)	0.85	0.75
Thickness, Mils (ASTM D1777-64/1975)	5.4	4.4
Fiber size, denier per Filament (dpf)	4.7	4.1

Grab Strength, lbs. (ASTM D1682-64/1975)		
Machine direction	26	19
Transverse direction	18	11
Burst strength, psi (ASTM D231-62/1975)	36	26
Air permeability,cfm/sq.ft. (ASTM D737-75/1980)	700	500
Water flow rate	500 gpm/sq.ft. @ 3" Head	
Specific gravity	1.0 - 1.3	
Temperature resistance (ASTM D648)	425°F	
Surface reaction to water	Hydrophilic	
Fiber length	Continuous	

(d) Gravelless pipe hole placement and diameter shall be as follows: holes shall be cleanly drilled and be placed in two (2) rows spaced 120 degrees apart along the bottom half of the pipe and 120 degrees from the top stripe to either row. Hole size shall be between five-sixteenths (5/16) inch to one-half (1/2) inch in diameter, and holes shall be placed only in corrugation "valleys," not on the crown or in the corrugation sidewall.

(e) All gravelless piping and encasing filter wrap shall be further encased, at the point of manufacture, within a plastic shipping and storage bag of sufficient burst strength, tear resistance and opacity, to prevent physical damage and ultraviolet radiation deterioration of the filter wrap.

(f) The manufacturer shall also make available suitable wide-width plastic tape for sealing of pipe section and fitting joints.

(5) [(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 at least 160 psi PVC or ABS construction. Deep hub water line type pipe shall be used.

(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 preperforated 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 five [three] thirty-seconds (5[3]/32) to one-fourth (1/4) inch in diameter, and hole spacing form three (3) to eight (8) [five (5)] feet depending on design requirements.

(7) [(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 10. Leaching Chambers. (1) All leaching chambers 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) Metal leaching chambers are prohibited;

(b) All leaching chambers shall be designed and constructed to support vertical uniform loading of 600 lb./sq.ft. on the top of the chamber without damage or permanent deformation;

(c) All leaching chambers shall be designed and constructed to provide ports, slots, holes or other similar openings on sidewalls to allow air movement and effluent access to lateral field trench or bed sidewall absorption surfaces;

(d) All leaching chambers shall be designed and constructed to be interlocking to allow serial installation of chambers, and be provided with acceptable end plates, caps or other necessary fittings and connectors;

(e) All leaching chambers shall be provided with at least one (1) inspection port of a minimum internal dimension of six (6) inches centrally located in the top of the chamber; and

(f) All such chambers 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 beside the observation port.

Section 11. [9.] Trench Fill and Barrier Material. (1) Trench fill material.

(a) River gravel or crushed dolomitic limestone shall be used for bedding and trench fill material for conventional 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). Such material shall conform to the sizing standards and specifications of the Kentucky Transportation Cabinet for No. 2, No. 23, and No. 4 coarse aggregates, except that other grades may be used if they are in conformance with the general requirements of this paragraph and are acceptable to the cabinet. 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 of a minimum one-fourth (1/4) inch diameter shall be used for bedding and trench fill material for low pressure pipe systems. River gravel or crushed limestone may also be used if washed and screened to a uniform size range of three-fourths (3/4) inch to one and one-half (1 1/2) inch.

(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, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 8, 1988
FILED WITH LRC: July 13, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1988 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 August 17, 1988, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dudley J. Conner

(1) Type and number of entities affected: 92 in-state and out-of-state manufacturers of components for on-site sewage disposal systems.

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

1. First year: Should be no effect as this amends current regulation to allow for new technology. May increase profits for some manufacturers through new product lines.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Decreasing costs should result through competition and introduction of new product lines which are less wasteful of raw materials.

(b) Reporting and paperwork requirements: Same as under current regulations - one time submission of design and specifications for products for state approval. Resubmission necessary only if changes made to original design.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change from present application of regulations - plan review and field visits to manufacturers to ascertain compliance.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: High compliance level may reduce number of field visits in future.

(b) Reporting and paperwork requirements: Review of design submissions and maintenance of "approved" list should remain stable as under present regulations.

(3) Assessment of anticipated effect on state and local revenues: No change anticipated, although introduction of new products may increase employment and impact tax revenues favorably.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No change alternative would stifle growth; relaxation of current regulations would lower product quality and performance; tighter requirements would also stifle growth and not produce any real gain in quality of performance.

(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: No conflict

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict

(6) Any additional information or comments: This regulation is only being amended to provide for clarity, definition, and to allow for new technology.

TIERING: Was tiering applied? No. Regulations provide for a minimum standard in design, construction, specifications and materials for components used in the construction of on-site sewage disposal systems. This establishes a baseline for acceptable quality and performance of such products which is necessary to assure proper functioning and operational longevity for the component itself and the on-site system it is used in. To apply tiering would allow lower quality components to be used for some systems even though the same minimum performance and operational longevity is needed to produce an on-site system for any usage or wasteload which will provide safe, sanitary treatment and disposal of sewage. Some inherent tiering is incorporated within the regulation due to the intended use of a particular component, in that lower grade materials may be acceptable for some applications of usage, but higher grades are required for other applications due to increased stresses on the component.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No___

Relates to on-site sewage disposal systems programs of local health departments who are agents of the cabinet. This program is mandatory.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation affects local health deparatments as mentioned above, and may affect other divisions whenever an on-site sewage disposal system is installed to serve any public facility owned or operated by local government. This regulation, however, has been in effect since December 23, 1985, and this amended version will have minimal impact.

3. State the aspect or service of local government to which this administrative regulation relates. The enforcement of the on-site sewage disposal systems programs carried

out by local health department certified inspectors and the evaluation and inspection services they perform.

4. How does this administrative regulation affect the local government or any service it provides? See above comments. An adjunct of the amendments to this regulation would be to provide local governments with cost saving alternatives to conventional sewer/treatment plant sewage disposal for areas or communities which need sanitary sewage disposal but cannot afford the high cost of conventional systems.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Food and Sanitation
(Proposed Amendment)

902 KAR 10:085. Kentucky on-site sewage disposal systems.

RELATES TO: KRS 211.350 to 211.380, 211.990(2)
PURSUANT TO: KRS 194.050, 211.090(3), 211.180(3)
NECESSITY AND FUNCTION: KRS 211.350 to 211.380 and 211.990(2) direct the cabinet to regulate the construction, installation, or alteration of any on-site sewage disposal system, except for systems with a surface discharge. This regulation establishes uniform standards for on-site sewage disposal systems. The function of this regulation is to assure the construction, installation, or alteration of on-site sewage disposal systems in such a manner as to protect public health and the environment.

Section 1. Citation of Regulation. This regulation may be cited as the "Kentucky On-site Sewage Disposal Systems Regulation."

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

[(1) "Alternative system" means any approved subsurface sewage disposal system other than a standard septic tank and lateral field system.]

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

(2) [(3)] "Areas subject to frequent flooding" means those areas inundated at a one (1) year or less frequency, for a period of time exceeding seven (7) consecutive days.

(3) [(4)] "Artificial drainage systems" means a manmade system of surface ditching or berming to divert surface water run-off; or curtain or vertical drains for interception and diversion of lateral groundwater flow; or underdrains for lowering the level of high water tables.

(4) [(5)] "Blackwater" means liquid and solid human body waste and the carriage waters generated through toilet usage. It also includes wastes resulting from a garbage disposal.

(5) [(6)] "Cabinet" means the Cabinet for Human Resources and includes its authorized agents.

(6) [(7)] "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.360.

(7) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357.

(8) "Clay" means a soil separate consisting of particles less than 0.002 mm in equivalent diameter.

(9) "Effluent" means the liquid discharge of a septic tank or other sewage pretreatment [treatment] unit.

(10) "Gravelless pipe" means large diameter perforated piping designed for use in lateral field trenches without the use of trench rock or gravel fill material. Such pipe includes a mandatory overwrap or encasing of synthetic filter material meeting specific criteria.

(11) [(10)] "Grease" means fats or oils of animal, vegetable, or mineral origin, separately or in colloidal or dissolved states in combination with soaps, detergents, and/or food particles.

(12) [(11)] "Grease trap" means an on-site sewage disposal system component designed to separate grease and its constituents from the wastewater stream, provide for storage of separated grease, and discharge the remaining wastewater for treatment.

(13) [(12)] "Greywater" means wastewater generated by water-using fixtures and appliances, excluding the toilet and the garbage disposal.

(14) [(13)] "Landscape position" means the location of the proposed on-site sewage disposal system installation area on a site relative to the surrounding topographic relief of the land surface. Different landscape positions are defined as follows:

(a) Hill or ridge top: the relatively level area occupying the summit of a hill or ridge.

(b) Shoulder slope: the transitional area immediately adjacent to the hill or ridge top where the slope begins to steepen and fall downward.

(c) Side slope: the slightly to steeply sloping portion of a hillside lying between the shoulder and foot slopes.

(d) Foot slope: the slightly to steeply sloping portion of a hillside near the base or lowest point of elevation.

(e) Toe slope: the lowest point of elevation at the base of a hillside; generally concave in cross-sectional profile.

(f) Terrace: a naturally occurring elevated shelf of level to slightly sloping character adjacent to streams and drainageways.

(g) Plain: level to slightly sloping or undulating areas in wide valleys.

(h) Flood plain: level to slightly sloping areas adjacent to streams or other bodies of water subject to flooding for extended periods.

(i) Depressions: sinkholes or other areas with a concave or cupped cross-sectional profile and lacking surface drainage outlets.

(j) Drainageway: a naturally occurring depressional area in the landscape with slight to steeply sloping sides which causes accumulation of surface and groundwater and channels it to surface or subsurface drainage outlets.

(k) [(j)] Convex slope: a sloping area with a humped or upwardly bowed cross-sectional profile which promotes dispersal of surface and groundwater.

(l) [(k)] Concave slope: a sloping area with a cupped or downwardly bowed cross-sectional profile which causes accumulation of surface and groundwater.

(15) [(14)] "Lateral field" means the area in which [lateral lines are installed, or can be used to generally describe] the subsurface soil absorption [portion of the on-site sewage

disposal] system is installed and is a general term for the system itself.

(16) "Low pressure pipe system" means an on-site sewage disposal system consisting of a sewage pretreatment unit, a dosing tank with pump(s) or siphon(s), a pressurized supply line, manifold, and lateral lines, and necessary control devices and appurtenances.

(17) "Leaching chamber" means a specially designed component for use in lateral field trenches or beds, with or without the use of trench rock or gravel fill material, which forms an open bottomed chamber or cavern over the subsurface soil absorption surface, and which interlocks with other such chambers to obtain the necessary absorption surface area.

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

(18) [(16)] "Mottling" means spots or blotches of different color or shades of color interspersed with the dominant color of soil.

(19) [(17)] "On-site sewage disposal system" means a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground. The common terms "on-site sewage system" or "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:

(a) A conventional system consisting of a sewage pretreatment unit(s), distribution box(es), and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit(s), necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of conventional, modified or alternative design; and

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil absorption system, or connection to a municipal sewer.

(20) [(18)] "Parent material" means weathering fragments of bedrock underlying a soil, colluvial or alluvial deposits, or loess deposits, from which the soil is being formed.

(21) [(19)] "Perched water table" means a saturated zone as identified by soil mottling, caused by a restrictive horizon and is generally above the natural water table.

(22) [(20)] "Percolation test" means a physical test conducted according to prescribed methods on a parcel of land [to determine relative suitability for an on-site sewage disposal system]. Such test measures the ability of the soil to accept a volume of water over a measured time period, under falling hydraulic head conditions. Results are given as a consistent acceptance rate or equilibrium rate in inches per hour.

(23) [(21)] "Permanent water table" means the zone of soil saturation by groundwater which remains relatively constant unless acted upon by artificial means of drainage or severe weather conditions. Such zone is evidenced by soil colors of black (due to high organic content), grays, blues, or olive greens.

(24) [(22)] "Person" means any individual, firm, association, organization, partnership, business trust, corporation, [or] company or governmental unit.

(25) [(23)] "Repair area" means an area, either in its natural state or which is capable of being modified, consistent with this regulation, which is reserved for the installation of an additional lateral fields(s) and is not covered with permanent structures or impervious materials.

(26) [(24)] "Restrictive horizon" means a soil horizon, which due to its cemented, [or] compacted or structural condition, is relatively impervious to the downward movement of water or treated effluent and [. Such horizons] includes: fragipans; hard pans; iron pans; [or] plow pans and platy or massive structural grades.

(27) [(25)] "Rock" means the consolidated or partially consolidated mineral matter or aggregate, including weathered rock or saprolite, not exhibiting soil properties, and exposed at the surface or overlain by soil.

(28) [(26)] "Sand" means a soil separate consisting of particles between two (2) mm and 0.05 mm in diameter.

(29) [(27)] "Seasonal high water table" means the upper level of a zone of saturation caused by groundwater fluctuation in the soil.

(30) [(28)] "Secretary" means the secretary for the Cabinet for Human Resources.

[(29) "Septic tank system" means an on-site sewage disposal system consisting of a septic tank, or tanks, a gravity-fed lateral field, and other necessary appurtenances required for proper collection, distribution, treatment, disposal, operation, and performance.]

(31) [(30)] "Sewage" means the blackwater and[/or] greywater wastes generated in [a] residential, commercial, or public structures or facilities [facility].

(32) "Sewage pretreatment unit" means a water-tight sewage treatment structure designed and constructed to receive raw sewage, separate solids from liquids, digest organic matter through a period of retention, and allow clarified effluent to discharge to a subsurface soil absorption system. Such pretreatment units fall into three (3) basic categories:

(a) Septic tanks - which rely predominantly on anaerobic bacterial action for treatment;

(b) Aerobic units - which introduce atmospheric air into the sewage to promote treatment by aerobic bacteria; and

(c) Comination units - which provide treatment through both anaerobic and aerobic bacterial action and/or mechanical filtering, ozonation or ultraviolet irradiation.

(33) [(31)] "Silt" means a soil separate consisting of particles between 0.05 mm and 0.002 mm in diameter.

(34) [(32)] "Site" means the area or parcel of

land on which structures or other facilities generating sewage and the on-site sewage disposal system(s) serving such structures or facilities are to be located.

(35) [(33)] "Slope" means the deviation of the surface of the land from true horizontal, measured as the rise or fall in feet or fractions thereof in a line from a fixed point to another point 100 feet distant. This rise or fall is normally expressed as a percentage of slope.

(36) [(34)] "Soil" means the naturally occurring unconsolidated mineral and organic material of the land surface. It consists of sand, silt and clay minerals, and variable amounts of organic materials.

(37) [(35)] "Soil horizon" means a layer of soil or soil material approximately parallel to the land surface and differing from adjacent genetically related layers in physical, chemical, and biological properties or characteristics such as color, structure, texture, consistence, pH[, etc].

(38) [(36)] "Soil map" means a map showing the distribution of soil types or other soil mapping units in relation to the prominent physical and cultural features of the earth's surface.

(39) [(37)] "Soil morphology" means the physical constitution, particularly the structural properties, of a soil profile as exhibited by the kinds, thickness, and the arrangement of the horizons in the profile, and by the texture, structure, consistence, and porosity of each horizon.

(40) [(38)] "Soil series" means a basic unit of soil classification, and consisting of soils which are essentially alike in all major profile characteristics.

(41) [(39)] "Soil structure" means the combination or arrangement of individual soil particles into definable aggregates, or peds, which are characterized and classified on the basis of size, shape, and degree of distinctness.

(42) [(40)] "Soil survey" means the systematic examination, description, classification, and mapping of soils in an area.

(43) [(41)] "Soil texture" means the relative proportions of sand, silt, and clay in a soil, and may include particles greater than two (2) mm in diameter, such as gravel, cobblestones, flagstones, chert, etc.

(44) "Subdivision" means the separation of a parcel or tract of land into three (3) or more parcels or tracts for the purpose of development into residential, commercial, or public building sites.

(45) [(42)] "Subsoil" means, in general concept, that part of the soil below the A horizon.

(46) "Subsurface soil absorption system" means that portion of an on-site sewage disposal system which accepts effluent from a sewage pretreatment unit(s) for further treatment by microbial, plant and animal life within the soil, as well as treatment by filtration, chemical decomposition and bonding within the soil itself, and consists of:

(a) Devices, components, and piping to transport effluent under pressure or by gravity flow, and distribute the effluent to the soil absorption surfaces;

(b) Trenches, beds, chambers, mounds, lagoons, artificial marshes, separately or in combination, which form or enclose the soil absorption surfaces;

(c) Rock, gravel, or other fill materials required within the system, including barrier materials, and fill soil within or over the system; and

(d) Artificial drainage systems, and other necessary site or soil modifications.

(47) [(43)] "System repair" means minor replacement or reconstruction of [an on-site system or] a component [portion] of an on-site sewage disposal [that] system.

(48) [(44)] "Textural class" means soils grouped on the basis of a specified range in texture.

(49) [(45)] "Topsoil" means:

(a) The layer of soil moved in cultivation; and

(b) The A or Ap horizon, as described in published U.S. Conservation Service soil surveys.

(50) [(46)] "Variance" means a waiver of certain specified requirements of this regulation granted by the cabinet after consideration of documented evidence that the granting of the waiver cannot reasonably be expected to result in the system contaminating groundwater supplies or creating a health hazard through surfacing of effluent, or otherwise creating a public health nuisance.

Section 3. Site Approval [Standards and] Procedures. [(1) Site approval standards.]

[(a) All sites proposed for the installation of an on-site sewage disposal system shall meet the minimum standards listed below:]

[1. An official site evaluation conducted by a certified inspector on the site reveals an overall classification of provisionally suitable based on the requirements of Section 4 of this regulation, and, when required:]

[2. A percolation test conducted in accordance to the requirements of Section 6 of this regulation reveals an average equilibrium percolation rate of at least one-half (1/2) inch per hour.]

[(b) On sites where the on-site sewage disposal system area has been designated through staking off of the perimeter, regrading or placement of any structure on that designated area shall result in the voiding of the site approval and/or the permit, unless special written permission is granted by the local health department.]

[(c) On sites requiring the placement of fill soil before a system can be installed, the following requirements shall apply:]

[1. Original soil surface layer shall be plowed prior to placement of fill.]

[2. Soil fill material shall meet or exceed the textural class characteristics of Soil Group III outlined in Section 4(4)(a) of this regulation.]

[3. Soil fill material shall be placed in the area to be filled in four (4) to six (6) inch layers, with each successive layer being mixed into the underlying layer by methods acceptable to the cabinet, to prevent stratification and unnecessary compaction.]

[4. Soil fill shall be protected by establishing a fast growing ground cover and allowed to settle for a period of one (1) year and be reevaluated before system installation can proceed.]

[5. Depth of soil fill required shall be determined by the local health department on a case-by-case basis, based upon minimum separation distances between lateral trench bottoms and restrictive horizons.]

(1) [(2)] Individual site approval procedures.

(a) All persons seeking approval of an individual site for the installation of an on-site sewage disposal system shall submit to the local health department an application for a site evaluation on forms provided by the cabinet, pay the required fee as established by the local board of health, and submit a basic site plan drawing showing the following information:

1. Specific address and/or location of the site.

2. Site boundary lines and dimensions of same.

3. Location of existing structures, wells, ponds, streams, easements, roads, drives, [etc.,] if present.

4. Proposed (or existing) location of structure to be served by the system, and proposed system location.

(b) Person(s) seeking approval shall establish with the local health department an appointment time and date for the site evaluation, if they desire to be present during the evaluation for consultation.

(c) If the site evaluation reveals that the applicable requirements of this regulation are met, the area designated for system installation shall be flagged [staked] off by the certified inspector using suitable, readily observable markers. The person seeking approval shall receive a copy of the Site Evaluation Form including the overall evaluation rating, along with instruction relative to site limitations (where found) requiring site or system modifications (or alternative systems). Instructions shall also be included to be presented to the Certified Percolation Tester selected by the person to conduct the percolation test (when required). Such instructions shall include the depth at which the test is to be conducted in the designated area, as well as any additional instructions deemed necessary by the Certified Inspector.

(d) After the site evaluation (and percolation test, when required) has been conducted and found acceptable by the cabinet, a permit to construct or install an on-site sewage disposal system shall be obtained prior to construction of any portion of that system. An application for a construction permit shall be submitted and accompanied by a detailed drawing of the proposed system, including all necessary specifications, and required permit fees. Such permits shall be issued only by a certified inspector and only to a certified installer or homeowner as provided in 902 KAR 10:110, and shall expire one (1) year from date of issuance unless an extension is granted by the cabinet.

(2) Subdivision approval procedures - tentative.

(a) All persons seeking tentative approval for new subdivisions developed after the effective date of this regulation shall submit to the local health department the following information:

1. Specific location of the site including a detailed site location map;

2. A preliminary land plan of the property to be developed, showing proposed lots and dimensions of same, topography with ten (10) foot contour intervals, and all proposed or existing wells, ponds, streams, easements, roads, streets, or existing structures; on a minimum 1:100 scale;

3. A detailed overlay for the plan delineating areas of soils with differing characteristics as found on the property, along with descriptive information of those characteristics as per Section 4(4) through (7) of this regulation, prepared by an approved consultant;

4. A statement, supported by official agency documentation, that municipal sewer system service is unavailable or economically infeasible to provide; and

5. Any other relevant information deemed necessary for site evaluation.

(b) After review of the above information, and any site visits or evaluation deemed necessary, the local health department may issue a tentative approval of the proposed subdivision for on-site sewage disposal system usage. Such approval shall be granted only insofar as to the general feasibility of on-site sewage disposal system usage for the subdivision as a whole, or for specific tracts or areas within the subdivision, and shall not be construed as an approval of any specific lot or site for system installation.

(c) Except where required by local health department regulation, securing tentative approval shall not be construed as a prerequisite to final approval, in that any person seeking approval for a subdivision may elect to initially apply for official site evaluations as outlined in subsection (1)(a) and (b) of this section on a lot-by-lot basis. Local health departments may adopt more specific requirements for subdivision approval, within their respective jurisdictions, which are not in conflict with these regulations.

(3) Subdivision approval procedures - final.

(a) All persons seeking final approval for subdivisions developed after the effective date of this regulation, and for all existing subdivisions of record shall follow the procedures for approval outlined in subsection (1)(a) and (b) of this section, in that each individual lot or site shall stand on its own merit as to approval or disapproval or type, size or design of the system to be installed.

(b) Whenever either tentative or final site evaluation reveals that individual lot or site on-site sewage disposal systems are infeasible or unapprovable due to site and/or soil characteristics, the person(s) seeking approval shall be directed to submit a proposal for a cluster system (or systems) where feasible, or pursue other alternatives under the authority of the Division of Water, Natural Resources and Environmental Protection Cabinet. When cluster system(s) are proposed, legal documents relative to ownership, operation and maintenance of such systems in perpetuity shall also be submitted.

Section 4. Site Evaluation Standards. (1) A certified inspector shall evaluate each proposed site. Based upon the factors contained in subsections (2) through (8) of this section, an official site evaluation form shall be completed classifying each factor as SUITABLE (S), PROVISIONALLY SUITABLE (PS), or UNSUITABLE (U).

(2) Topography.

(a) Uniform slopes under fifteen (15) percent shall be considered SUITABLE with respect to topography.

(b) Uniform slopes between fifteen (15) percent and thirty (30) percent shall be considered PROVISIONALLY SUITABLE with respect to topography. Slopes within this range may require installation of curtain or vertical

drains upslope from the lateral field [system to remove all excess water that might be moving laterally through the soil during wet periods of the year]. Usable areas larger than normally required may be needed in this slope range.

(c) Slopes greater than thirty (30) percent shall be considered UNSUITABLE except when a thorough study of the soil characteristics indicates that a subsurface soil absorption [lateral field] system will function satisfactorily and sufficient ground area is available to properly install such a system. Slopes greater than thirty (30) percent may be classified as PROVISIONALLY SUITABLE when:

1. The slope can be terraced or otherwise graded and the lateral field [lines] located in naturally occurring soil [so as to maintain] a minimum ten (10) foot horizontal distance from the [trench and the] top edge of the fill embankment; or

2. The soil characteristics can be classified as SUITABLE or PROVISIONALLY SUITABLE to a depth of at least thirty (30) inches;

3. Surface water run-off is diverted around the lateral field [system so that there will be no scouring or erosion of the soil over the field];

4. If necessary, groundwater flow is intercepted and diverted through curtain or vertical drains [to prevent such water from running into or saturating the lateral field system]; and

5. There is sufficient ground area available to install the on-site sewage disposal system with these modifications.

(d) Complex slope patterns and slopes dissected by gullies and ravines shall be considered UNSUITABLE with respect to topography.

(3) Landscape position.

(a) Convex hill or ridge tops, shoulder slopes, side slopes, and level plains shall be considered SUITABLE with respect to landscape position.

(b) Convex foot slopes and natural terraces shall be considered PROVISIONALLY SUITABLE with respect to landscape position.

(c) Concave hill or ridge tops, shoulder slopes, side slopes, foot slopes, toe slopes, [and] natural drainageways and terraces may be considered PROVISIONALLY SUITABLE when:

1. The soil characteristics can be classified as SUITABLE or PROVISIONALLY SUITABLE to a depth of at least thirty (30) inches;

2. Surface water run-off is diverted around the lateral field [system so that there will be no scouring or erosion of the soil over the field]; and

3. Groundwater flow is intercepted and diverted through curtain or vertical drains [to prevent such water from running into or saturating the lateral field system].

(d) If the provisions above listed in paragraph (c) of this subsection cannot be met the landscape position shall be classified UNSUITABLE.

(e) Areas closer than fifty (50) feet to the rim [center] of a [depression or] sinkhole, or areas subject to frequent flooding shall be considered UNSUITABLE with respect to landscape position.

(4) Soil characteristics (morphology). Soil borings shall be taken in the area to be used for subsurface soil absorption systems. At least four (4) such borings shall be taken to a depth of forty-two (42) inches or as required to determine the soil characteristics. Backhoe pits may be required when a more direct observation of soil horizons is deemed necessary for proper evaluation. Backhoe pits shall be required on all individual sites where the presence of stony or rocky soils precludes auger use, and on all sites which have been strip mined, filled or otherwise disrupted. Soil boring cores or exposed soil horizons in backhoe pits shall be evaluated and a determination made as to the suitability of the soil to absorb effluent. The important soil characteristics which shall be evaluated by the certified inspector are as follows:

(a) Texture. The texture of the different horizons of soils may be classified into four (4) general groups.

1. SOIL GROUP I - sandy texture soils contain more than seventy (70) percent sand-sized particles in the soil mass. These soils do not have enough clay to be cohesive. Sandy soils have favorable sewage application rates, but may have a low filtering capacity leading to malfunction due to contamination of groundwater. The sandy group includes the sand and loamy sand soil textural classes and shall generally be considered SUITABLE with respect to texture.

2. SOIL GROUP II - coarse loamy texture soils contain more than thirty (30) percent clay-sized particles in the soil mass. They exhibit slight or no stickiness. The coarse loamy group includes sandy loam and loam soil textural classes and shall generally be considered SUITABLE with respect to texture.

3. SOIL GROUP III - fine loamy texture soils contain less than forty (40) percent clay-sized particles and not more than thirty (30) percent sand-sized particles in a soil mass. They exhibit slight to moderate stickiness. The fine loamy group includes sandy clay loam, silt loam, clay loam, and silty clay loam textural classes and shall generally be considered PROVISIONALLY SUITABLE with respect to texture.

4. SOIL GROUP IV - clayey texture soils contain forty (40) percent or more clay-sized particles and include sandy clay, silty clay, and clay. There are two (2) major types of clays: the 1:1 clays shall generally be considered PROVISIONALLY SUITABLE as to texture; and the 2:1 and mixed mineralogy clays, which shall be considered UNSUITABLE as to texture.

5. The soil texture shall be estimated by field testing. Laboratory estimation of texture by particle-size analysis may be substituted for field testing when conducted in accordance with ASTM (American Society for Testing and Materials) C-136 and D-422 standard for sieve and hydrometer analyses, at the property owner's expense.

(b) Structure is usually not important in soil Groups I and II, and these types of soils shall generally be considered SUITABLE as to structure. The four (4) [three (3)] kinds of soil structure that are most significant in movement of sewage effluent through Groups III and IV soils are described as follows:

1. Block-like soil structure - block-like soil structure in Group III and IV soils shall be considered PROVISIONALLY SUITABLE. Some rocks even though weathered, such as slates or creviced or fractured rocks, exhibit block-like structure. Rock shall be considered UNSUITABLE as to structure.

2. Prismatic soil structure - prismatic structure is generally found in fragipans or

other restrictive horizons and shall be considered UNSUITABLE.

3. [2.] Platy soil structure - if Group III and IV soils fall out into plate-like sheets, then the soil would have platy structure which shall be considered UNSUITABLE.

4. [3.] Absence of soil structure - soils in Groups II, III, or IV which are massive and exhibit no structural aggregates shall be considered UNSUITABLE.

(5) Internal soil drainage.

(a) Internal soil drainage characteristics shall be determined by the following procedures:

1. Comparison of moist soil samples collected from each soil horizon, to a minimum depth of forty-two (42) inches, to standard Munsell notation soil color charts to establish color hue, value and chroma; and

2. Observation of soil profile for evidence of low chroma (chroma 2 or less) soil horizons, and mottling characterized as to abundance, size and contrast; and

3. Observation of soil profile for evidence of freestanding groundwater.

(b) Soils exhibiting uniform colors of greater than chroma 2 with no mottling or free groundwater at a depth of forty-two (42) inches or greater shall be considered SUITABLE with respect to internal drainage, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE.

(c) Soils exhibiting uniform colors of greater than chroma 2 with no mottling or free groundwater at a depth of less than forty-two (42) inches but greater than twenty-four (24) [thirty (30)] inches shall be considered PROVISIONALLY SUITABLE with respect to internal drainage, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE.

(d) Soils exhibiting uniform colors less than chroma 2 and/or mottling, or free groundwater at a depth of less than twenty-four (24) [thirty (30)] inches may be classified as PROVISIONALLY SUITABLE, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE; and

3. Curtain drain, vertical drain, or underdrain systems are installed to intercept lateral groundwater movement, or to lower and maintain the free groundwater level to a depth of greater than twenty-four (24) [thirty (30)] inches.

(e) Soils exhibiting uniform colors less than chroma 2 and/or mottling, or free groundwater at a depth of less than twenty-four (24) [thirty (30)] inches which cannot meet the criteria listed in paragraph (d)1 or 2 of this subsection shall be considered UNSUITABLE.

(6) Soil depth.

(a) Presence of bedrock or large flagstones ("floaters") shall be determined by probing the site and through direct observation of the soil profile. Soil depth shall be considered the vertical distance from the existing ground surface to solid, fractured or rippable bedrock; or to weathered parent material; or to large flagstones which occupy more than thirty (30) percent of the exposed soil profile.

(b) [(a)] Soil depths forty-two (42) inches or greater shall be considered SUITABLE as to depth.

(c) [(b)] Soil depths less than forty-two (42) inches, but at least twenty-four (24) [thirty (30)] inches, shall be considered PROVISIONALLY SUITABLE as to depth.

(d) [(c)] Soil depths less than twenty-four (24) [thirty (30)] inches shall be classified UNSUITABLE as to depth.

(e) [(d)] Where special system design and installation modifications can be made to provide at least eighteen (18) inches of undisturbed naturally occurring soil between [below] the bottom of the lateral field [trench], such soils may be reclassified PROVISIONALLY SUITABLE as to depth.

(7) Restrictive horizons.

(a) Presence of restrictive horizons such as fragipans, iron pans, clay pans, [or] plow pans, or platy or massive structural grades shall be determined by observation of the soil profile for brittle or dense horizons underlying shallow horizons displaying mottling [and/]or concretions of iron or manganese.

(b) Soils in which restrictive horizons are at forty-two (42) inches in depth or greater shall be considered SUITABLE.

(c) Soils in which restrictive horizons are at depths less than forty-two (42) inches, but at least twenty-four (24) [thirty (30)] inches, shall be considered PROVISIONALLY SUITABLE.

(d) Soils in which restrictive horizons are at depths less than twenty-four (24) [thirty (30)] inches may be classified PROVISIONALLY SUITABLE, provided that:

1. Special system design and installation modifications can be made to provide at least eighteen (18) inches of undisturbed naturally occurring soil between the bottom of the lateral field [trench bottom] and the restrictive horizon; or

2. The provisions of Section 5(3)(a)2 [1] of this regulation are met.

(e) Soils in which restrictive horizons are at depths less than twenty-four (24) [thirty (30)] inches which cannot meet the above listed provisions in paragraph (d)1 or 2 of this subsection, shall be considered UNSUITABLE.

(8) Available space.

(a) Sites shall have sufficient usable land area to permit the installation and proper functioning of on-site sewage disposal systems, in addition to the land area to be occupied by existing or proposed structures, or other natural or manmade features of the site which are not compatible with system installation.

(b) For general determination of sufficient usable land area ONLY for the subsurface soil absorption system (lateral field) and NOT including the structure(s) it serves, the pretreatment unit portion of the complete on-site sewage disposal system, or any other site features, the following shall apply for each 100 gallons per day wasteload or fraction thereof:

1. Uniform slope range of zero to no more than fifteen (15) percent in the system area - 1,000 square feet;

2. Uniform slope range from more than fifteen (15) percent to no more than twenty (20) percent in the system area - 1,250 square feet;

3. Uniform slope range from more than twenty (20) percent to no more than twenty-five (25) percent in the system area - 1,500 square feet;

4. For each five (5) percent increase, or

fraction thereof over twenty-five (25) percent add an additional 250 square feet:

5. The above figures are based upon space requirements for a conventional trench type lateral field installed in a Group III provisionally suitable soil and does not include any minimum setback distances which may apply on any given site. Group IV soil sites will require more space than indicated, and Groups I-III suitable soil sites will require less, as will most other modified or alternative subsurface soil absorption systems.

(c) [(b)] Sites classified PROVISIONALLY SUITABLE shall have a minimum repair area equal to 100 percent of the land area occupied by the lateral field [portion of the system] set aside in addition to the space required in paragraph (b) [(a)] of this subsection.

(9) Determination of overall site suitability. All of the criteria in subsection (2) through (8) of this section shall be determined to be SUITABLE, PROVISIONALLY SUITABLE, or UNSUITABLE as indicated. If all criteria are classified the same, that classification will prevail. However, it is unlikely that all criteria will be classified the same in all situations. Where there is a variation in classification of the several criteria, the following shall be used in making the overall site classification. The lowest of the uncorrectable characteristics will determine the site classification.

(a) If the topography is classified as UNSUITABLE it may be reclassified PROVISIONALLY SUITABLE under the conditions outlined in subsection (2) of this section.

(b) If the landscape position, soil texture, soil structure, internal drainage, or depth to restrictive horizon is classified as UNSUITABLE, and cannot be reclassified as PROVISIONALLY SUITABLE through modification the overall classification will be UNSUITABLE regardless of the other criteria unless the provisions of Section 5(6) of this regulation are met.

(c) When soil depth is classified as UNSUITABLE, it may be reclassified as PROVISIONALLY SUITABLE under the conditions outlined in subsection (6)(e) [(d)] of this section.

Section 5. Site Classification and System Restrictions. (1) Restrictions shall be placed upon the types of on-site sewage systems which will be approved for use due to site limitations and/or daily waste load volume. Such restrictions shall be determined by the following conditions, and the modified or alternative system(s) listed shall be considered as the minimum acceptable system(s).

(2) On sites with an overall evaluation rating of SUITABLE a conventional subsurface soil absorption system [consisting of a septic tank (or tanks), distribution box(es) and lateral field] (twenty four (24) inches deep), shall be permitted.

(3) On sites with an overall rating of PROVISIONALLY SUITABLE (the provisionally suitable rating was originally granted or site modifications were made raising an unsuitable rating to that level) due to:

(a) Depth to rock, water table, or restrictive horizon.

1. Twenty-four (24) [Twenty-eight (28)] inches but less than forty-two (42) inches - a shallow (six (6) [ten (10)] - twenty-three (23) inch deep [lateral trenches]) modified conventional trench, gravelless pipe, or low pressure pipe (LPP) system, with a minimum of ten (10) [twelve (12)] inches of fill soil above the trench barrier material and a minimum separation distance of eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon.

2. Eighteen (18) inches to less than twenty-four (24) inches (for soils with restrictive horizons only) a shallow (six (6) inches to eleven (11) inches deep) modified, conventional trench, gravelless pipe, or low pressure pipe (LPP) system with a minimum of ten (10) inches of fill soil above the trench barrier material; a corresponding minimum separation distance of twelve (12) to seventeen (17) inches between trench bottoms and the restrictive horizon; a two (2) foot increase in minimum spacing between individual trenches; and, a twenty-five (25) foot increase in minimum setback distances downslope of the lateral field. [Twenty-six (26) inches to less than twenty-eight (28) inches - a shallow (eight (8) - ten (10) inch deep lateral trenches) low pressure pipe (LPP) system, with a minimum of twelve (12) inches of fill soil above the trench barrier material.]

3. Eighteen (18) inches to less than twenty-four (24) [twenty-six (26)] inches - (for soils with rock or water tables only) a mound system; or, sufficient filling of the area with suitable soil to allow installation of a modified or alternative system after a one (1) year settling period.

4. Less than eighteen (18) inches - filling of the area with suitable soil to sufficient depth to allow modified or alternative system installation after a one (1) year settling period.

[5. Where soils rating SUITABLE or PROVISIONALLY SUITABLE, as to texture, structure, and internal drainage are found beneath a restrictive horizon - a deep (trench bottom at least eight (8) inches below the bottom of the restrictive horizon) conventional system including curtain or vertical drains to intercept perched groundwater over the restricted horizon.]

(b) Soil texture [and/]or structure.

1. Soil Group III - a conventional system.

2. Soil Group IV - a conventional trench system modified by the use of multiple septic tanks in series or an aerobic pretreatment unit, as outlined in Section 8(2) of this regulation. Such systems may also be required to be modified [, a permanent low volume flush water closet(s); and] by the use of alternate lateral fields; by dosing tank and pump or siphon; by dosed alternate lateral fields; by dosed automatic alternating lateral fields; or by the use of a low pressure pipe (LPP) system; by a lagoon and lateral field system; or by other alternative systems approved for such use by the cabinet. Modified conventional trench systems on sites with this soil group shall use equal flow distribution boxes only.

(4) On sites where available space is restricted due to site size or topography:

(a) A conventional system with lateral beds in lieu of trenches or a combination of trenches and beds; or installation of as much linear footage of lateral trench and/or bed as can be installed using hillside or drop distribution with overflow from the last box in series going into a holding tank [(this method cannot be used

on sites with soils in Soil Group IV)].

(b) A low pressure pipe (LPP) system.

(c) Installation of permanent low-volume flush water closets or nonwater carriage toilet devices to reduce wasteload. [Such permanent water saving devices shall be required for use on sites with soils in Soil Group IV, however, no reduction of lateral field size is allowed.]

(5) On sites where a PROVISIONALLY SUITABLE rating was initially obtained (or was obtained after site modifications), which may be affected by a combination of site limitations, the on-site system(s), whether conventional, modified, or alternative, which will overcome all limitations involved shall be installed.

(6) Sites originally classified as UNSUITABLE may be used for on-site sewage disposal systems, provided engineering, hydrogeologic, and soil studies indicate to the local health department that a suitable conventional system or a suitable modified or alternate system can reasonably be expected to function satisfactorily. Such sites may be reclassified as PROVISIONALLY SUITABLE upon submission to the local health department of the following:

(a) Adequate substantiating data including a percolation test to indicate that an on-site sewage disposal system can be installed so that the effluent will receive adequate treatment;

(b) Adequate substantiating data to indicate the effluent will not contaminate any drinking water supply, groundwater used for drinking water, or any surface water;

(c) Adequate substantiating data to indicate that the effluent will not be exposed on the ground surface where it could come in contact with people, animals, or vectors.

Section 6. Percolation Testing Standards. (1) Local health departments may require percolation testing, when deemed necessary to confirm site evaluation findings, only on sites where the original, naturally occurring soil horizons have been destroyed, commingled or buried through strip mining, road cutting, filling or other disruptive site modifications in the area proposed for system installation. Such percolation testing results shall be used to determine the relative ability of the commingled fill material to accept effluent. When such a test is deemed necessary it shall be performed in the presence of a certified inspector.

(2) [(1)] All percolation tests shall be performed in accordance with the procedures outlined in this section. Such tests meeting all procedure standards shall be considered "approved."

(3) [(2)] Excavation of test holes.

(a) Test holes shall be located on each site within the staked area designated by the certified inspector.

(b) A minimum of four (4) test holes shall be dug in this area to the depth of the proposed lateral field as specified by the site evaluation.

(c) Test holes shall be located in the designated area so as to provide uniform coverage of the area, with no more than a fifty (50) foot spacing between centers of adjacent test holes.

(d) Test holes shall be six (6) to eight (8) inches in diameter.

(e) After excavation, all holes shall be scarified in the lower twelve (12) inches of the hole to break up smearing and restore absorption surfaces.

(f) All loose soil material shall be removed from test holes to reduce puddling and sealing of soil pores by fine soil materials.

(g) A portion of the excavated materials from the test holes shall be mounded around each hole to prevent surface water run-off from entering the hole in the event of rainfall during the period preceding and continuing through the conduct of the test.

(4) [(3)] Presoaking of test holes.

(a) In soils which do not exhibit surface or subsurface cracking in dry weather (low shrink-swell potential), the test holes shall be presoaked by filling with water for at least fourteen (14) hours prior to the test.

(b) In soils which exhibit surface or subsurface cracking during dry weather due to moderate to high shrink-swell potential (Soil Group IV), the soil surrounding the test holes shall be saturated at least three (3) days by maintaining at least twelve (12) inches of water in each hole during that period. After completion of the swelling procedure stated above, test holes shall be left for a period of fourteen (14) hours before proceeding with measurement procedures. In lieu of the above procedure, testing for such soils may be conducted using the presoak procedure outlined in paragraph (a) of this subsection, when such tests are conducted during the months of December through April.

(5) [(4)] Conduct of test measurements.

(a) All measurements shall be made from fixed reference points establishing the bottom of the test hole and a point exactly six (6) inches above the bottom. Measurement shall be made using calibrated measuring sticks, calibrated instruments or devices using floats, or other such equipment acceptable to the cabinet.

(b) In test holes containing more than six (6) inches of water remaining after the presoaking/swelling period (assuming significant rainfall has not occurred between the completion of presoak/swelling procedures and the start of test measurement), the water depth shall be recorded and considered as prima facie evidence of an unsatisfactory percolation rate.

(c) In test holes containing six (6) inches or less of water remaining after the presoaking/swelling period, the water shall be adjusted to a six (6) inch depth and testing period.

(d) Water added to test holes for testing purposes shall be free of sediment and foreign material, and shall be added in such a manner that slaking and scouring of test hole surfaces is minimized.

(e) Testing on each hole shall begin by adjusting the water depth as in paragraph (c) of this subsection, followed by measurement of the amount of decrease in water depth at the end of a one (1) hour period from the six (6) inch reference point. Measurements shall be recorded on forms supplied by the cabinet for this purpose. Such measurements shall be recorded to the nearest one-eighth (1/8) inch.

(f) After first hour measurements, all test holes shall be readjusted to the six (6) inch water depth and remeasured and recorded at the end of another one (1) hour period. This process shall be repeated for a total four (4) hour period. The hourly periods for each test hole shall begin at the time the water depth is readjusted to six (6) inches. Actual time at

which the test was initiated on each hole shall be recorded.

(g) The fourth hour readings of all test holes shall be averaged and the result recorded on the report form as the equilibrium rate, or consistent rate of acceptance.

(h) For percolation testing in Group I soils the time period between readings shall be reduced to ten (10) minute intervals for at least four (4) successive readings. The percolation rate in inches per hour for all holes shall be calculated from the results thus obtained, and the last reading averaged to obtain the equilibrium rate.

(i) In the event the rate of acceptance in any of the test holes is not consistent, the affected test hole or holes shall continue to be tested until a consistent rate is obtained. The rate(s) thus obtained for the affected hole(s) shall be used in calculating the equilibrium rate. A consistent rate shall be considered to have been obtained when the acceptance rate for an affected test hole remains the same, or decreases no more than one-half (1/2) inch, on two (2) consecutive hourly measurements.

(j) When test holes fail to meet the minimum acceptance rate of one-half (1/2) inch per hour, the area represented by the hole or holes involved shall be removed from consideration for placement of the lateral field system. In the event that the area represented by the failing hole or holes reduces the usable (passing) area to the extent an approved system cannot be installed, or a failing equilibrium rate for all holes is obtained, the site shall be considered unacceptable for a subsurface sewage disposal system, if percolation test findings confirm similar site evaluation findings.

Section 7. Certification to Conduct Percolation Tests and Approval of Consultants. (1) No person shall offer service to conduct percolation tests until they have met the requirements of this section and have been issued certification.

(2) All persons who propose to offer such service shall submit their name, occupation, professional registration number, and address to the cabinet.

(3) Persons eligible for certification shall include:

(a) Engineers;

(b) Land surveyors;

(c) Architects;

(d) Soil scientists;

(e) Registered sanitarians;

(f) Geologists.

(4) To be eligible for recertification the persons listed in subsection (3) of this section shall possess a valid professional registration, license, certificate or other such document, issued by the respective profession's registration, licensure, or certification board, agency, committee, or other recognized body within the state of Kentucky. Failure to maintain professional registration shall result in the suspension of certification to conduct percolation tests until such registration is reestablished.

(5) Persons meeting eligibility requirements shall be issued a certification number, which shall be placed on all percolation test report forms, and any additional documents related thereto.

(6) Persons seeking certification may be required to demonstrate their ability to conduct percolation tests in accordance with the standards in Section 6 of this regulation prior to receiving such certification.

(7) All certified persons shall be subject to unannounced monitoring by the cabinet, while conducting percolation tests, to determine if standards are being met.

(8) When the cabinet finds that improper testing or test reporting practices exist, the certified person involved shall be subject to suspension or permanent revocation of such certification.

(9) Whenever suspension or revocation proceedings are initiated by the cabinet, the certified person shall have the right to request a hearing before the cabinet to present evidence on his behalf as to why the intended action should not be taken.

(10) Whenever the cabinet has suspended or revoked certification for cause, the cabinet shall provide notification to the appropriate professional body(ies) with which the person affected is registered, licensed, or certified, for any further action they deem necessary.

(11) Approval of consultants. The cabinet may, as it deems necessary, grant limited approval to eligible persons to perform tentative site evaluations ONLY for subdivisions proposed for development which intend to utilize on-site sewage disposal systems for sewage disposal.

(a) Persons eligible for approval as consultants shall include:

1. Registered engineers;

2. Registered architects;

3. Soil scientists;

4. Geologists;

5. Former fully certified inspectors who are no longer employed by the cabinet or its agents and whose certification has not been suspended or revoked, but was rescinded upon termination of employment.

(b) The cabinet may require attendance at training seminars and competency testing as a condition of maintaining approved status.

(c) Approval granted under this subsection may be suspended or revoked for cause, and the procedures outlined in subsections (9) and (10) of this section shall apply, as applicable.

Section 8. System Sizing Standards. (1) Design waste flows. Daily waste flow volumes for system design and sizing purposes shall be computed for each residential unit, business or commercial facility, or other public facility, based upon the design flow per designated flow unit listed in Table 1 below, times the number of such flow units involved.

(a) When approved permanent low-volume flush water closets using one (1) gallon or less of water per flush cycle are installed exclusively in any residence, commercial facility or other public facility, the daily design waste flow unit for that specific residence or facility may be reduced to the figure given in Column B in Table 1.

(b) When approved permanent nonwater carriage water closet type devices (composting toilets, incinerator toilets, oil carriage toilets, etc.) are installed exclusively in any residence and no other blackwater type wastes are created, the daily design waste flow unit for that specific residence may be reduced to the figure given in Column C in Table 1.

(c) No daily waste flow unit reduction shall

be granted for installation of nonpermanent flow reduction devices such as: showerheads, showerhead or faucet inserts, suds-saver type automatic washing machines, or other such devices. [On sites with soils in Soil Group IV,] Use of water saving devices including low-volume flush water closets, may be required by the cabinet when deemed necessary due to site limitations. [, however, no reductions in system sizing shall be granted.]

(d) All on-site sewage systems which receive a design daily waste flow of 2,000 gallons or more (or require more than 1,000 lineal feet of lateral field) shall be designed to provide dosing of the lateral field through the use of dosing tanks and pumps or siphons, or through the installation of a low pressure pipe (LPP) system.

(e) The following businesses or facilities shall not be approved for disposal of waste waters into an on-site sewage disposal system due to the nature of the wastes generated or the high volume of wastewater created:

1. Laundromats except on an experimental basis as provided under Section 8(14) [(12)] of this regulation;
2. Car washes;
3. Livestock slaughterhouses (kill room wastes only);
4. Funeral parlors or mortuaries (embalming wastes only); and
5. Factories (industrial or process wastes only).

Table 1
Design Daily Waste Flow

Source of Sewage	Units	Gallons/Unit/Day Standard	Column B	Column C
Dwelling Units:				
Single Family Residences	Each bedroom	120	96	90
Hotels or Motels	Each room	100 [120	80 96]	
Apartments/ Condominiums/ Townhouses	Each bedroom	120 [180	96 144]	
Rooming Houses	Each bedroom	120	96	
Mobile Home Parks	Space	300 [350]	No reductions	
Commercial/Industrial:				
Retail stores	Each toilet room	200	120	
Malls, Shopping Centers	Each 1,000 sq. ft.	200	120	
Offices	Employee	20	12	
Medical offices (with labs)	Employee	50	40	
		250 additional		
Dental offices (with water rinse units)	Exam chair	250	200	
Dental offices (with suction units)	Exam chair	50	40	
Industrial buildings	Employee/ shift (does not include process water or cafeteria)	20	12	
(Add for showers)	Employee/ shift	10	No reductions	
Construction site	Employee/ shift	20	12	
Visitor center	Visitor	5	3	
Barber shops	Chair	75	60	
Beauty shops	Chair	125	100	
Laundromats:				
(Experimental only)	Machine	300	No reductions	
Eating and Drinking Establishments:				
Restaurant (does not include bar or lounge)	Meal/seat	15	12	
Bar or Lounge	Seat	20	16	
Drive-in (no public restrooms)	Established	500	No reductions	
Drive-in (with public restrooms)	Car stall	20	16	
Food Markets:				
Prepackaged	Store	250 [500]	No reductions	
Food Processing	Store	1,000	900	
(With eat-in delicatessen)	Meal/Seat	15 Add.	12 Add.	
(With carryout delicatessen)	Store	250 Add.	250 Add.	
Rabbit, or fish processors (with solid waste separation)	Employee/ Shift	20	12	
	per animal or fish processed	0.5	No reduction	

Institutional (Includes Food Service):			
Hospitals and surgical centers	Each bed	300	240
Mental	Each bed	100	80
Prison or Jail	Each inmate bed	100	80
Nursing Home, Rest Home	Each resident bed	100	80
Schools and Churches (Includes [Does not include] Food Service):			
Elementary, Day Care, Kindergarten	Student	25	20
High School	Student	35	28
College	Student	35	28
Boarding School	Student	60	48
Churches (without kitchen facilities)	Average attendance/ person	3	2
(with kitchen facilities)	Average attendance/ person	5	4
Recreational:			
Recreational Vehicle Park w/sewers to each space [hookups]	Space	125 [150]	No reductions
With Central Bath only [no hookups]	Space	75	60
Dump station only	Space	25	No reductions
Day Camp (No meals)	Person	15	12
Residential Camp ([does not] includes cafeteria)	Person	60	48
Resorts/ Housekeeping Cabin	Bedroom	120	96
Tent Camping Areas w/ central bath	Space	75	60
Country Clubs (Does not include food service) [No Meals]	Member	15	12
Golf courses	Average Attendance/ Person	10	8
[Meals and showers]	Member	50	40
Swimming Pools	Design Capacity/Person	10	8
Picnic Parks, Sports Facilities, Ball Parks (w/ toilet only)	Average Attendance/ Person	5 [10]	3 [8]
(w/food service)	Average Attendance/ Person	8	6
Movie Theaters	Seat	5	3
Drive-in Theaters ([does not] includes food service)	Space	15	12
Skating Rink/ Dance Hall	Person (based on rated capacity)	10	8
Bowling Alley	Lane	100	80
Transportation:			
Airport, Bus or Rail Depot	Passenger	5	3
Auto Service Station	Each Water Closet or Urinal	250	150

(2) Residential pretreatment units. All septic tanks used in single-family residence on-site sewage disposal systems shall meet the minimum working liquid capacities listed below, based on the number of bedrooms involved. Aerobic units or other types of approved pretreatment units shall be sized according to their rated treatment capacities in gallons per day, based upon the design daily waste flow per design unit given in Table 1. On sites with soils of Soil Group IV, additional pretreatment shall be provided by use of one (1) of the following methods:

(a) Installation of multiple septic tanks in series. The first tank, receiving raw sewage from the residence shall be of the required minimum capacity in Table 2, or of at least 1,000 gallons capacity. Additional tanks shall be installed in series as needed to provide a total capacity equal to the required minimum plus an additional fifty (50) percent;

(b) Installation of an aerobic pretreatment unit. For those aerobic units which do not include an integral trash or primary settling chamber in their construction, such shall be provided by the series installation of a minimum 500 gallon septic tank to receive raw sewage, with effluent discharging into the aerobic unit. Where required minimum tank capacities for residential systems exceed 1,000 gallons and larger capacity tanks are unavailable, serial

installation of multiple tanks is permitted to obtain the necessary capacity. In such instances the first tank in series shall have a minimum capacity of 1,000 gallons.

Table 2
Minimum Capacity of Pretreatment Units

Number of Bedrooms	Gallon Capacity (Without Garbage Disposal)	Gallon Capacity (With Garbage Disposal)
2 or less	750	1,000
3	1,000	1,250
4	1,250	1,500
5	1,500	1,750
Each Additional	250	250

(3) Commercial and public facility pretreatment units.

(a) Minimum working liquid capacities for all septic tanks for commercial and public facility on-site sewage disposal systems shall be determined by multiplying the daily design waste flow per unit times the total number of such units, plus an additional fifty (50) percent of that figure for solids storage. (Gallons/unit/day X Number of Units) + 50% = MINIMUM CAPACITY REQUIRED.

(b) Procedures and requirements listed in subsection (2) of this section relative to: sites with soils in Soil Group IV; aerobic and other types of pretreatment units; and use of multiple tanks in series to obtain required capacity; shall also apply to commercial facility system installation.

(c) All commercial or public facilities engaged in the manufacture, processing, preparation, and service of food and food products shall be provided with an approved grease trap. All wastewater drain piping from food processing equipment; sinks for washing of food, equipment and utensils; dishwashers; and floor drains in food preparation and processing areas shall be separated from other wastewater piping, and discharge into a grease trap prior to entrance into an on-site sewage disposal system. Minimum liquid capacity of grease traps shall be based upon the total design daily waste flow for the facility served. Grease trap capacity shall be a minimum of 150 gallons for daily waste flows of 4,000 gallons or less; 300 gallons for daily waste flows of 4,001 to 8,000 gallons; and 500 gallons for daily waste flows greater than 8,000 gallons. All grease traps shall be placed outside of the structure served unless special approval is granted by the cabinet. In all instances the grease trap shall be located as close as practicable to the source of the wastewater to prevent separation of grease prior to entry into the grease trap.

(4) Sizing of gravity distribution lateral fields. All gravity distribution lateral fields for on-site sewage disposal systems shall be sized based upon the design daily waste flow for the residence, commercial or public facility involved as determined from Table 1. The total daily waste flow multiplied [divided] by the linear footage requirement per gallon [allowable daily loading rate] found in Table 3 for the specific site soil characteristics, shall determine the minimum linear [square] footage of lateral trench [bottom area] required. [This is converted into the total length of two (2) foot wide trench needed as shown in Table 4.]

Table 3
Application Rates for Gravity Distribution
Lateral Fields Based on Two (2) Foot
Conventional Trench Width

Soil Group	Soil Texture Classes	[Approx. Range] [Percolation] [Rate Inch/Hr.]	Application Rate Gal/ Sq. Ft./Day	Linear Feet Per Gallon
I Sands	Sand	[6 - 12]	1.2	.42
	Loamy Sand	[4 - 5 7/8]	.9	.56
II Coarse Loams	Sandy Loam Loam	[3 - 3 7/8]	.7	.72
III Fine Loams (with suitable structure)	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	[2 - 2 7/8]	.5	1.0
Fine Loams (with provisionally suitable structure)	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	[1 - 1 7/8]	.37	1.35
IV Clays (Kaolinitic or 1:1 with Provisionally Suitable Structure)	Sandy Clay Silty Clay Clay	[1/2 - 7/8]	.27	1.85

[Table 4
Lateral Trench Length Requirements for
Gravity Distribution Systems
Based on Two Foot Trench Width

Application Rate Gallon/Square Foot/Day	Linear Feet per 100 gallons
0.27	185
0.37	135
0.5	100
0.7	71.5
0.9	55.5
1.2	41.3]

(5) Sizing of low pressure piping distribution lateral fields. All low pressure piping (LPP) distribution lateral fields for on-site sewage disposal systems shall be sized based upon the calculated total design daily waste flow for the residence, commercial or public facility involved as determined from Table 1. The total daily waste flow divided by the allowable daily loading rate found in Table 4 [5], for the specific site soil characteristics, shall determine the minimum square footage of absorption area required. Further system design requirements shall be determined based upon the criteria and specifications given in the North Carolina State University Publication UNC-SG-82-03, "Design and Installation of Low-Pressure Pipe Waste Treatment Systems."

Table 4 [5]
Application Rates for
Low Pressure Pipe (LPP) Lateral Fields

Soil Group	Soil Texture Classes	[Percolation] [Rate Inch/Hr.]	Rate Gal/ Sq.Ft./Day
I Sands	Sand Loamy Sand	[6 - 12] [4 - 5 7/8]	0.5
II Coarse Loams	Sandy Loam Loam	[3 - 3 7/8]	0.4
III Fine Loams (with suitable structure)	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	[2 - 2 7/8]	0.3
Fine Loams (with provisionally suitable structure	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	[1 - 1 7/8]	0.175 [0.2]
IV Clays (Kaolinitic or 1:1 with provisionally suitable structure	Sandy Clay Silty Clay Clay	[1/2 - 7/8]	0.1

(6) Sizing of gravelless pipe systems. Gravelless pipe in eight (8) and ten (10) inch internal diameter sizes only, may be used in lieu of standard lateral trenches for all conventional and modified conventional lateral field applications (except those in Group IV soils where gravelless pipe is permitted only on an experimental basis), linear footage requirements listed in Table 3 shall also apply to gravelless pipe.

(7) [(6)] Sizing of gravity distribution lateral beds. When lateral beds are permitted in lieu of standard two (2) foot wide lateral trenches, the required total length of standard lateral trench needed shall be calculated from Tables 1 and [,] 3[, and 4] information. That figure shall be multiplied by the percentage shown on Table 5 [6], for the bed width intended for use. The number of linear feet resulting shall be the amount required for installation for that particular bed width.

Table 5 [6]
Lateral Bed Length Requirements
for Gravity Distribution Systems
Based on Bed Width

Bed Width	Multiply Total Linear Footage of Two (2) Foot Wide Trench Required By:
3'	70%
4'	55%
5'	45%
6'	40%
7'	35%
8'	32%
9'	30%
10'	28%
11'	27%
12'	26%

(8) Sizing of leaching chamber systems. Leaching chamber systems may be used in lieu of standard lateral trenches for all conventional and modified conventional lateral field applications and for experimental alternative systems on slopes of no more than ten (10) percent for trench installation and no more than five (5) percent for bed installation. Linear footage requirements for chambers shall be based on nominal internal chamber width as follows:

(a) In trench configuration - for nominal widths of twenty-eight (28) inches to thirty (30) inches, sixty (60) percent of Table 3 required linear footage; for nominal widths of forty-two (42) inches to forty-four (44) inches, forty-five (45) percent of Table 3 required linear footage.

(b) In bed configuration - for all chamber widths eighty-five (85) percent of Table 5 linear footage requirements based on total bed width to nearest foot.

(c) Other chamber designs with nominal widths outside the ranges listed in paragraph (a) of this subsection shall be sized on a case-by-case basis, accordingly.

(9) [(7)] Sizing of gravity distribution alternate lateral fields or beds. When alternate gravity distribution lateral fields or beds are used or required, the individual alternate lateral fields or beds shall each contain one-half (1/2) [two-thirds (2/3)] of the total linear footage required for the system. Such alternate lateral fields or beds shall be alternated in use on a yearly basis through the use of an approved alternating valve or device.

(10) [(8)] Sizing of dosed gravity distribution automatic alternating lateral fields or beds. When dosed automatic alternating lateral fields or beds are used or required, the individual alternating lateral fields or beds shall each contain one-half (1/2) of the total

linear footage required for the system. Dosed automatic alternating lateral field or bed systems shall be designed and operated so as to alternate between lateral fields or beds with doses of effluent, through the use of two (2) or more dosing siphons or pumps controlled by an automatic alternating device, or by dosing simultaneously.

(11) [(9)] Sizing of combination evapotranspiration/absorption lagoon and lateral field systems. On sites with Group IV soils where a conventional lateral field system or alternative system cannot be installed due to heavy clay soils with poor or no structure conditions, a combination evapotranspiration/absorption lagoon and shallow lateral field system may be considered for installation. Total daily waste flow shall be determined by using Table 1, and the total square footage of lagoon waste surface area shall be calculated by multiplying the total gallons of waste flow per day by five (5) square feet per gallon. Effluent entering the lagoon shall have passed through a properly sized pretreatment unit, and overflow shall be directed to a shallow (six (6) [twelve (12)] inches to eighteen (18) inches depth) lateral field. Such lateral field size shall be calculated by multiplying the total daily waste flow in gallons by .10 [.28] linear feet per gallon.

(12) [(10)] Sizing of mound systems. Mound systems used to overcome site conditions of shallow depth to rock or water tables, or slowly permeable soils shall be designed and sized based upon the information and criteria given in the United States Environmental Protection Agency publication EPA 625/1-80-012 "Design Manual, On-site Wastewater Treatment and Disposal Systems," Chapter 7.2.4 on Mound Systems.

(13) [(11)] Sizing of residential laundry waste systems. When, in the cabinet's opinion, improved system performance may be attained by separating laundry greywater waste flows from other residential waste flow for new system installations, or as repair for existing systems, such separation shall be accomplished in the following manner:

(a) Greywater sewer for the washing machine shall be separated from the main house sewer;

(b) Laundry greywater shall discharge into a [shallow (eighteen (18) inch depth)] lateral bed or trench(s) of a minimum of 100 square feet of bottom surface soil absorption area [four (4) feet in width, and twenty-five (25) feet in length] for a two (2) bedroom residence and an additionally fifty (50) square feet [twelve and one-half (12 1/2) feet in length] for each additional bedroom.

[(c) Where available space is limited, other bed and/or trench configurations may be used which provide equivalent square footage of soil absorption area.]

(c) [(d)] On new system installations where laundry waste-flow separation is permitted a fifteen (15) percent reduction in the primary system lateral field requirements shall be allowed only for sites with soils in Soil Groups I-III. On sites with soils in Soil Group IV such separation may be required but no system site reduction will be granted.

(14) [(12)] Sizing of other on-site sewage disposal systems. Other alternative systems not specifically mentioned in this regulation, or experimental systems, shall be sized according to applicable standards on a case-by-case basis by the cabinet. Such sizing shall be based upon site characteristics, effluent characteristics, pretreatment processes, technology involved, and other demonstrable factors.

(15) [(13)] Sizing of dosing tanks [or chambers]. Dosing tanks [or chambers] shall be of sufficient capacity to hold two (2) times the total design daily waste flow calculated from Table 1 for single-family residential structures, and one and one-half (1 1/2) times [three (3) times the single dose volume] for commercial and public facilities.

(16) [(14)] Use and sizing of holding tanks. Holding tanks shall only be permitted under the following conditions [be of sufficient capacity to contain the total design daily waste flow calculated from Table 1 for the following time periods]:

(a) For single family residences, commercial and public facilities - where written official verification is submitted that [- holding tanks are not recommended for single family residences due to the expense involved in routine pumping. Only those residences used on a limited or seasonal basis for vacation or weekend occupancy, or when] a municipal sewer system will [is to] be available within a maximum two (2) year period; as an addition to a new or existing system due to limited space precluding required full system installation or existing system expansion; and, as per paragraph (c) of this subsection. [, shall be considered for holding tanks. For such uses a ten (10) day storage capacity shall be provided.]

(b) For commercial and [,] public facilities only - where less than 200 gallons per day total wasteflows are involved and no other feasible method of wastewater disposal is available due to site limitations. [seven (7) days.]

(c) For all residential, commercial, and public facilities - when site limitations preclude immediate system installation, the local health department certified inspector may grant usage of a holding tank to allow use of the structure served, during a one (1) year settling period for system area fill soil which will enable an approved system to be installed.

(d) In all situations where holding tanks are permitted, installation of low-volume flush (one (1) gallon or less) water closets shall be mandatory, as shall be the installation of an audible or visible, electrically operated alarm system located within the structure served.

(e) All holding tanks shall be sized to hold a minimum seven (7) day wasteflow and serviced in accordance with KRS 211.970 to 211.990. A copy of a contract with a licensed septic tank cleaning company for servicing the holding tank shall be submitted with the permit application. The owner shall maintain records on all servicing which shall be available for inspection by the cabinet. Local health departments may also require the posting of a reasonable cash performance bond by the owner.

Section 9. System Installation Standards. (1) System layout standards.

(a) All systems shall be designed, laid out, and installed in the flagged [staked] area set aside for such purpose during the site evaluation. Installation of the system in any other area is prohibited without the written consent of the local health department certified

inspector.

(b) Layout of the system on the site by the certified installer shall be accomplished by using suitable stakes or markers to locate excavation sites for system components, and shooting of surface grades to establish necessary excavation depths to assure proper elevation "fall" in the system. Lateral trenches or beds shall be laid out to follow parallel to the surface contour lines of the site.

(c) Maximum length for individual lateral trenches or beds for gravity distribution systems shall be no more than 100 feet. Maximum length for individual lateral trenches in low pressure pipe (LPP) systems shall be seventy (70) [sixty (60)] feet.

(d) Lateral trenches for gravity distribution systems shall be spaced a minimum of eight (8) feet on centers. Lateral trenches for low pressure pipe (LPP) systems shall be spaced a minimum of five (5) feet on centers. Lateral beds or leaching chambers for gravity distribution systems shall be spaced a minimum of eight (8) feet from side wall to side wall. Lateral trench spacing shall be increased two (2) feet on centers on all sites with slopes greater than fifteen (15) percent and less than twenty (20) percent. On slopes greater than twenty (20) percent, each five (5) percent increase in slope, or fraction thereof, shall require an additional spacing of two (2) feet on centers for lateral trenches.

(e) Lateral line spacing in gravity distribution bed systems shall be as follows:

1. For beds of four (4) to six (6) feet in width, one (1) lateral line placed on the centerline of the bed is required;

2. For beds of seven (7) to ten (10) feet in width, two (2) lateral lines are required, spaced two and one-half (2 1/2) feet from the side walls;

3. For beds eleven (11) feet and wider, the two (2) laterals spaced two and one-half (2 1/2) feet from the side walls shall be used, and additional lateral lines installed five (5) feet on centers, or fraction thereof, from the side wall laterals.

(2) Excavation standards.

(a) Only that heavy equipment necessary to the installation of an on-site sewage disposal system shall be permitted in the flagged [staked] area set aside for that system. Such equipment shall be operated so as to minimize travel over, and compaction of, the system area.

(b) Excavation of the lateral field, bed or other subsurface soil absorption system portion of the total system area shall be restricted by the soil moisture conditions of that portion of the area at the intended depth of excavation for all soil texture classes listed in Soil Group IV. Such restriction shall apply for all system installations taking place during the months of November through May, or anytime immediately after heavy rainfall occurs. Soil moisture conditions shall be determined by test excavation to the intended depth of the lateral trenches or beds. A small portion of soil excavated from that depth shall be rolled between the thumb and fingers. If the soil can be rolled into a "wire" shaped form which does not easily crumble, the soil is too wet to work and will compact and seal absorption surfaces. If a "wire" form cannot be rolled and the soil crumbles, excavation can proceed.

(c) Excavation for septic tanks or other pretreatment units, distribution boxes, alternating valves or devices, and all nonperforated piping used to conduct effluent to other components through gravity flow means, shall be done only after shooting of grades to assure a positive gradient [minimum of one-eighth (1/8) inch per foot fall] from the outlet of the pretreatment unit through all components to the distribution box(es) or device(s). Such determinations of grade shall take into account the intended excavation depth from grade of lateral trenches or beds.

(d) Excavations for placement of all components except lateral trenches or beds shall be made to the necessary depth for installation and shall be dug level in undisturbed earth. If filling is required to level or raise components to the proper grade, tamped gravel or sand shall be used for such bedding purposes. When installation occurs in stony areas, large stones, flags, boulders, etc., shall be removed from component placement excavations to prevent component damage, and the cavities created by their removal shall be filled with tamped gravel or sand, if they are located on the bottom surface of the excavation.

(e) Excavations for lateral trenches or beds shall be made to the depth specified by the certified inspector based on site evaluation results. Maximum trench or bed depth from grade for a conventional on-site sewage disposal system shall be considered as being twenty-four (24) inches. Minimum trench or bed depth for modified gravity and dosed gravity distribution systems using four (4) inch diameter lateral lines shall be six (6) [ten (10)] inches from grade. Minimum trench depth for low pressure pipe (LPP) systems shall be six (6) [eight (8)] inches from grade. Trench width for low pressure pipe systems shall be a minimum of twelve (12) [eight (8)] inches [to a maximum of eighteen (18) inches]. Minimum trench width for gravelless pipe shall be eighteen (18) inches to a maximum of twenty-four (24) inches. Minimum or maximum trench width shall be as per manufacturer's specifications for leaching chambers.

(f) Lateral trench and bed bottom grades shall be as shown in Table 6 [7] below:

Table 6 [7]
Maximum Grades for Trench and Bed Bottoms

Distribution Method	Type	Maximum Grade inches/100 feet
Hillside or drop box (also serial distribution)	Trench	Level to 2"
Equal Flow Box	Trench	2" to 4"
	Bed	Level to 1" in all directions from center
Gravelless Pipe	Trench	Level
Low Pressure Pipe	Trench	Level
	Bed (Mound)	Level

Leaching Chambers (using any of the above methods except low pressure) (using low pressure pipe)	Trench layout Bed Layout Trench	2" to 4" Level Level

(g) Excavations for curtain drains, vertical drains or under drains to intercept and/or lower groundwater tables shall be made to the depth determined by the certified inspector and graded [(where necessary)] to drain to the surface or to a pumped catchment basin.

(h) Excavations for distribution leaders (nonperforated pipe) from the distribution box(es) on gravity distribution systems, shall be made so as to provide a "benched" distribution corridor above the trench or bed bottom. This "benched" corridor shall be bedded in undisturbed earth, and shall be excavated so as to provide a "bench" height of six (6) inches above the elevation(s) of the trench or bed bottoms. Benching of the distribution corridor shall be used to reduce the possibility of "short circuiting" of effluent and effluent ponding around distribution boxes.

(i) Excavation of evapotranspiration/absorption lagoons shall be done using a bulldozer or similar track type equipment to reduce compaction of the lagoon bottom. Lagoon bottoms shall be uniformly level and shall be constructed to provide a maximum wastewater depth below the overflow outlet of four and one-half (4 1/2) [three (3) to five (5)] feet, and a freeboard of two (2) [or three (3)] feet. Containment berming, dikes, or dams may be of excavated materials, if sufficient clay content exists in the soil to prevent seepage between the berm and the original soil surface after compaction and are "keyed" into the original soil beneath at least one (1) foot at the base. Berms, dikes or dams shall be constructed on a three (3) to one (1) (three (3) feet vertical to one (1) foot horizontal) slope. All lagoons located in areas accessible to children or livestock shall be enclosed within a six (6) foot high chain-link fence or its equivalent with a locked gate.

(3) Component installation standards.

(a) Septic tanks and other pretreatment units, dosing tanks and holding tanks shall be installed level and all connections to the unit which conduct sewage or effluent, and all unit joints or seams, are to be rendered watertight. Manufacturer's instructions on installation, and all connections to the unit (piping and/or electrical), shall be followed by the installer. Units showing structural damage on delivery, or damaged in placement shall be replaced with an undamaged unit. Patching of minor damage which does not affect the structural integrity or watertightness of the unit may be permitted under the supervision of the certified inspector.

(b) It shall be the certified installer's responsibility to provide access to within twelve (12) inches of [at] finished grade to the outlet end manhole on all septic tanks. Such access shall be provided through the use of suitable manhole risers of a minimum eighteen (18) [sufficient] internal dimension to allow removal of the tank manhole lid. Such manhole risers shall be provided with tamper-resistant lids or covers. Lids or covers of precast concrete, cast iron or steel shall be considered tamper-resistant if weighing sixty (60) pounds or more and require a vertical lift for removal. Lids or covers of sheet metal, plastic or fiberglass shall be attached by bolts or other suitable fastener requiring a tool for removal. [Where the septic tank manufacturer has provided a knockout on the top of the tank for installation of a six (6) inch diameter capped riser pipe, such riser pipe may be installed in lieu of the manhole riser.]

(c) Distribution boxes, and alternating valves or devices, shall be installed level, and all piping connections shall be rendered watertight. Such components showing structural damage on delivery, or damaged in placement shall be replaced with an undamaged component.

(d) Equal flow distribution boxes shall be installed on a stable base to prevent settling. Tamped sand or gravel shall be sufficient for concrete boxes, but plastic or fiberglass boxes shall be securely anchored to a poured concrete base a minimum of four (4) inches thick and extending on all sides of the box side walls at least four (4) inches. Rough leveling of the box may be done using a carpenter's level, however, final leveling shall be done by the "water leveling method" described below:

1. Outlet leader piping shall be extended past the inside side wall of the box at least three-fourths (3/4) of an inch but no greater than one (1) inch to allow attachment of plastic caps or plugs by solvent welding or cementing. Once attached, the water level is raised to the desired point on the caps or plugs, the level is marked on all caps or plugs, and a knife is used to cut out the upper portion of the cap or plug to the level marked.

2. Additional water is carefully added while closely observing the water as it enters the outlets. If the outlets are properly leveled, all outlet lines will begin to receive water at the same level and time. If one or more lines are receiving water while others remain dry, adjustments to those higher outlets are necessary. Fine adjustment is then made by shaving down the cutouts on the caps or plugs until leveling is achieved.

3. Special leveling devices in the form of caps or inserts designed for this purpose shall be used where available. Other methods may be considered acceptable by the cabinet provided that they can be demonstrated to be of equal or superior performance to the above method.

(e) Approved nonperforated plastic pipe shall be used as leader piping to connect outlets in the distribution box(es) to the perforated lateral lines in gravity distribution systems, and shall extend two (2) feet into all trenches or beds before connection to perforated lateral line.

(f) All leader piping connected to equal flow boxes shall be installed at no greater than one-eighth (1/8) inch per foot slope for the first five (5) feet of run from the box to restrict the flow velocity of effluent.

(g) Lateral lines for conventional gravity distribution trenches or beds shall be laid as follows:

1. A six (6) inch deep layer of approved trench rock or other fill material is carefully placed in the trench or bed to prevent sealing of absorption surfaces from fill impact, and leveled;

2. Lateral piping is placed and leveled on the trench fill material in the center of the trench

(or properly spaced in beds), and retained in place to prevent movement, while additional trench fill material is added to a point two (2) inches above the top of the top of the lateral piping, for a total of twelve (12) inches of trench fill material;

3. Other methods of lateral piping and trench rock placement may be approved by the cabinet upon demonstration of equivalent compliance.

4. A two (2) to four (4) inch layer of approved barrier material, [(]straw[, hay, grass clippings),] or a single layer of synthetic filter fabric, is then placed over the trench fill material to prevent entry of backfill soil fines.

(h) Lateral lines for low pressure pipe (LPP) systems shall be laid as follows:

1. At the beginning of each trench and at twenty (20) foot intervals thereafter, barrier walls of undisturbed earth or compacted earth fill at least one (1) foot thick shall be placed from side wall to side wall of the trench to the level to which lateral piping is to be installed;

2. Six (6) inches of pea gravel or approved alternate trench rock shall be placed in the trench and leveled;

3. Lateral piping is laid in place and assembled (may be preassembled), and leveled;

4. Trench earth barrier walls are completed to ground surface and additional pea gravel or other trench fill material is carefully placed over the laterals to a height of two (2) inches over the top of the piping;

5. Other methods of lateral piping and trench rock or pea gravel placement may be approved by the cabinet upon demonstration of equivalent compliance.

6. [5.] A one (1) to two (2) inch layer of approved barrier material, [(]straw[, hay, or grass clippings),] or a single layer of synthetic filter fabric, is then placed over the pea gravel to prevent entry of backfill soil fines.

(i) Lateral lines for gravelless pipe systems shall be installed as follows:

1. Remove plastic shipping and storage bags from pipe; do not remove filter wrap.

2. Lay out gravelless pipe with top stripe UP. Roll fitler wrap back from ends of each section of pipe to allow proper connection of pipe sections and/or reducer connectors or end caps.

3. Join pipe sections together with approved connectors - make sure top stripes are in direct alignment on both sections to be joined, and tape joint with plastic tape supplied by pipe manufacturer to seal joint. Pull filter wrap ends back over joint and tape them together.

4. Fit offset reducer connectors (four (4) inches by eight (8) inches or four (4) inches by ten (10) inches) to inlet ends of joined pipe sections and locate four (4) inch inlet at top of pipe in alignment with top strips; tape joints to seal. Leave filter wrap loose at this time.

5. Fit end caps on other end of joined pipe sections, seal joints with tape, pull filter wrap over end joint and tape in place. Note: on systems for Group IV soils (clays) at least two (2) inspection ports per system must be provided at the end of selected lateral and brought to finished grade.

6. Lay joined lateral pipe sections into trenches with top stripe directly UP. Connect solid smooth wall header piping from distribution box outlets to four (4) inch inlet on offset reducer connector (insert header pipe four (4) inches into connector) and seal joint with tape. Pull filter wrap over end of reducer cap and around four (4) inches header piping and tape in place.

(j) Leaching chambers shall be installed according to manufacturer's specification; however, where such specifications are less restrictive or conflict with these regulations, the regulations shall take precedence, except that reduced backfill cover (no less than six (6) inches) over the leaching chamber may be permitted.

(k) [(i)] Installation of effluent piping to an evapotranspiration/absorption lagoon and overflow piping to the lateral field system shall be as follows:

1. Nonperforated gravity flow or pressurized piping is laid in an excavated trench into the [center of the] lagoon and anchored [attached] to a poured concrete, three (3) foot square, four (4) inch thick apron. The inlet shall be a tee laid on its side.

2. Overflow piping consists of a supported, vertically oriented tee [inverted elbow] connected to a nonperforated gravity flow plastic pipe which conducts overflow to the distribution box(es) of the lateral field. The overflow should be located at a point within the lagoon that is the furthest distance from the inlet apron. The upper leg of the tee shall be screened and the lower leg extended downward to within three and one-half (3 1/2) feet of the lagoon bottom.

3. All submerged piping into and out of a lagoon shall be provided with suitable water stops or leak collars with a minimum extension of twelve (12) inches on all sides of the pipe.

(4) Curtain drain, vertical drain, underdrain installation standards.

(a) Curtain drains and underdrains shall be installed according to the following procedures:

1. After excavation of drain trenches to the required depth (by backhoe or trencher) the perforated plastic drainage pipe may be laid in the trench. Depending on trench width and depth it may be necessary to bed the pipe in small gravel or pea gravel to provide lateral and vertical support to pipe side walls to prevent collapse of the pipe.

2. After bedding and grading the pipe to drain, regular trench rock fill material (for trenches twelve (12) inches or wider) or pea gravel (for trenches narrower than twelve (12) inches) shall be added to the trench to a point four (4) inches [above distinct soil mottles and/or grey, blue, olive or similar soil colors indicating the highest point of water table elevation, or six (6) inches] from grade [above a fragipan, iron pan or clay pan to prevent their reforming].

3. Suitable barrier material as used in lateral trenches shall be placed over the drain trench fill material.

(b) Vertical drains may be used when more permeable soil horizons exist below a restrictive horizon [(fragipans, iron pans, clay pan)], and shall be installed according to the following procedures:

1. After excavation of the drain trenches to the required depth the trenches are filled with crushed rock or pea gravel as in curtain drains above, to the points listed in paragraph (a)2 of this subsection, as applicable. Drainage piping is unnecessary in vertical drains since drainage

is encouraged downward through the restrictive horizon to more permeable soils.

2. Suitable barrier material as used in lateral trenches shall be placed over the drain trench fill material.

(5) Filling, backfilling and finish grading standards.

(a) On sites requiring the placement of fill soil before any on-site sewage disposal system can be installed, the following requirements shall apply:

1. Surface vegetation shall be removed and the original soil surface layer shall be tilled to a depth of two (2) inches prior to placement of fill.

2. Soil fill material shall meet or exceed the textural class characteristics of Soil Group III outlined in Section 4(4)(a) of this regulation.

3. Soil fill material shall be placed in the area to be filled by methods acceptable to the cabinet, to prevent stratification and unnecessary compaction.

4. Soil fill shall be protected by establishing a fast growing ground cover and allowed to settle for a period of one (1) year and be reevaluated before system installation can proceed.

5. Depth of soil fill required shall be determined by the local health department on a case-by-case basis, based upon minimum separation distances between lateral trench bottoms and restrictive horizons, bedrock, or water tables.

(b) [(a)] Backfilling around and over septic tanks and other pretreatment units, dosing tanks, holding tanks, [dosing chambers,] distribution boxes, low pressure pipe manifolds, alternating valves and devices and nonperforated effluent piping and distribution leader piping, shall be accomplished by filling and tamping by layers. While the filling and tamping process is being carried out, care shall be taken to prevent shifting, tilting, misalignment or damage of system components or damage to watertight joints, seams or connections. The location of all such components shall be clearly marked by staking or flagging after backfilling and prior to final grading.

(c) [(b)] When manufacturer's installation instructions require specific backfilling procedures to protect component warranties, prevent damage, or prevent flotation of the component due to ground water pressure, those procedures shall be followed. Soil for backfilling gravelless pipe trenches shall be loose and friable. Soil aggrgates (clods or clumps) shall be no larger than one-half (1/2) inch in any dimension for backfil in contact with the pipe and filter wrap to assure proper operation. Use of large clods or clumps of soil for backfill is prohibited. If soil excavated from trenches will not meet this criteria, suitable backfill soil shall be obtained elsewhere.

(d) [(c)] Backfilling of lateral trenches or drainage trenches shall be accomplished with minimal compaction of soil fill, and soil fill material shall be left mounded four (4) to six (6) inches above grade over trenches to allow for settling. Backfilling over lateral beds shall be accomplished through the use of lightweight wheeled or crawler type tractors to minimize compaction, and shall be left mounded four (4) to six (6) inches above grade to allow for settling.

(e) Backfilling shall not be done until after the system has been inspected and approved to that point of construction by a certified inspector.

(f) On sites where additional fill soil is required over the lateral field due to shallow depth of installation, the following procedures shall apply:

1. The requirements of paragraph (a)1 through 3 of this subsection;

2. Fill shall be extended on all sides of the lateral field to a minimum distance of ten (10) feet, except on sloping sites where the fill on each end of the system shall expand outward to a minimum of fifteen (15) feet at the lowest point downslope, and the fill at the downslope side of the system shall be increased to a minimum of fifteen (15) feet beyond the system;

3. Minimum depth of fill shall be as required by the certified inspector, but may not be less than ten (10) inches over the trench rock fill material, or top of the gravelless pipe (for leaching chambers six (6) inches minimum) and that depth shall extend over the entire lateral field to a point at least two (2) feet beyond the sidewall of any trench, bed or chamber, at which point the remainder of the fill may be tapered to original grade out to the minimum distances specified in subparagraph 2 of this paragraph.

(g) [(d)] Finish grading over the on-site sewage system shall be performed in such a manner as to minimize compaction through the use of lightweight equipment. Such grading shall be restricted to work necessary to provide positive surface drainage away from the system, especially the lateral field. Final grading over staked or flagged system components shall be accomplished manually, or with lightweight equipment using extreme care to prevent damage to or misalignment of components.

(h) [(e)] Finish grading work which removes soil from the system area, or which results in that area being used to dispose of excess soil graded from other areas on the site, shall be prohibited.

(i) [(f)] Finish grading on other areas of the site shall be done in such a manner as to divert surface water run-off from driveways, patios, downspouts, slopes, ditches, gullies, etc., away from the area where the system is installed. When site conditions are such that normal grading procedures cannot divert all such run-off, diversion ditches, swales, berms, or other such diversion drainage means shall be constructed to divert run-off away from the system.

Section 10. System Setback Restrictions. (1) Minimum setback distances shall be required for installation of on-site sewage disposal systems from structures, water supplies, roads, streams, bodies of water, and other structural or topographic features [etc.], as listed in Table 7 [8] below:

Table 7 [8]
Minimum Setback Distances
for On-site Disposal Sewage Systems

Structure or Topographic Feature	Minimum Distance (Ft.) from Pretreatment Unit (or Holding Tank)	Minimum Distance (Ft.) from Side wall of Lateral Trench, [or] Bed, or Lagoon
Property lines	5	5 (50 for lagoons)
Building foundations	10	10
Basements	10	20
Basements (Downslope from system)		30 (5-15% Slope) 40 (15-25% Slope) 50 (25% and Higher)
Wells	50	70
Cisterns	50	70
Cisterns (Upslope from system with bottom at higher elevation than system)	10	10
Natural Lakes or Impoundments (Shoreline)	25	50
Streams	25	25
Springs (Upslope from system)	25	50
(Upslope with curtain interceptor drain)	10	20
(Downslope from system)	50	70
Drainage Ditches, Road cutbanks (Downslope)	10	25
Underdrain system	10	10
Curtain or vertical drain	10	10 (Upslope and Sides) 25 (Downslope)
Sinkholes (Rim [Center of depression])	50	50
Buried Water Lines or Utility Lines	10	10
Utility Easements	10	10
Driveways, parking lots, or paved areas	10	5
Livestock pens, feed lots, corrals, etc.	10	10

Section 11. System Installation Inspection. (1) All on-site sewage disposal systems installed, constructed, altered or repaired shall be inspected by a certified inspector.

(2) The inspection sequence performed shall be as follows:

(a) The certified [initial installation inspection shall be requested by the] installer shall complete an installer's affidavit recording all grade shot readings of all [upon completion of] excavation work certifying by his signature that such work has been performed in compliance with the regulation. In lieu of the installer's affidavit, the certified installer may request an initial inspection be performed by a certified inspector. [and the setting of the pretreatment unit.] Inspection shall consist of shooting of grades in all excavations to determine compliance with this regulation[, and inspection of the pretreatment unit for compliance as to approved type, proper capacity].

[(b) In lieu of the initial inspection the certified inspector may grant approval for continuance of installation work up to the point prior to backfilling provided that the installer assumes responsibility of shooting all grades and recording his readings on a form provided by the cabinet, certifying by his signature that excavation work has been performed in compliance with the regulation.]

(b) [(c)] An [The final] installation inspection shall be conducted by the certified inspector prior to backfilling of the system. The certified installer shall be responsible for requesting this inspection at the discretion of the certified inspector. To facilitate inspection of lateral fields the certified installer shall provide direct access to trench or bed bottoms to allow accurate shooting of grade and elevation. Such direct access shall be provided through the use of ports, piping, or other methods acceptable to the certified inspector, and at such locations within the lateral field as deemed necessary.

(c) [(d)] The [final] installation inspection shall consist of examination of the following: system components, as to type, size or capacity, approved status, materials, connections; installation as to proper placement, proper grade or level; conduct "water leveling" method on equal flow distribution boxes; testing of dosing devices, low pressure systems and alarm systems; shooting of trench, bed, or lagoon bottom grade and elevation, installation of lateral lines, trench fill material depth, trench barrier material placement; and other necessary examinations and checks to determine compliance with this regulation relative to all site and system modifications required.

(d) [(e)] Systems meeting approval shall be backfilled in accordance with this regulation, and it shall be the certified installer's responsibility to assure proper backfilling. Once backfilling is completed, it shall be the certified installer's responsibility to perform or supervise finish grading. Where additional fill soil over the system is required, once finish grading is completed, the certified installer shall request a final inspection. It shall then be the owner's responsibility to protect the system from damage, disruption, or unnecessary surface water drainage during [final grading and] subsequent occupancy and system usage.

(e) [(f)] Systems not meeting approval shall be reconstructed as needed to meet compliance.

Section 12. Responsibilities. (1) The construction, operation, and maintenance of on-site sewage disposal systems, whether conventional, modified, or alternative systems, shall be the responsibility of the owner, developer, certified installer, or user of the system as applicable in the circumstances.

(2) Actions of the cabinet and certified inspectors, engaged in the evaluation and determination of measures required to effect compliance with the provisions of this regulation shall in no way be taken as a guarantee that on-site sewage disposal systems approved and permitted will function in a satisfactory manner for any given period of time, or that such agents or employees assume any liability for damages, consequential or

direct which are caused, or which may be caused, by a malfunction of such systems.

Section 13. Prohibited Practices. (1) Certain practices shall be prohibited, and their use shall result in immediate voiding of permits and/or site evaluations as applicable, and are as follows:

(a) Use of unapproved system components in lieu of replacement with approved components;

(b) Use of seepage pits, cesspools, and dry wells;

(c) Use of improperly constructed or designed systems, in lieu of redesign and/or reconstruction;

(d) Placement of lateral field within less than twelve (12) inches of, or below, the upper limits of a restrictive horizon or water table;

(e) Placement of lateral field within less than twelve (12) inches of, or into bedrock. Dynamiting, ripping, or otherwise removing bedrock to install a lateral field is expressly prohibited;

(f) Cutting, filling, or otherwise altering the original grade and/or soil characteristics of the area upon a site staked or flagged off for system installation, except when such work is a requirement of these regulations;

(g) Allowing any use of the area staked or flagged off for system installation as a material or soil stockpile, vehicle or heavy equipment parking area or roadway, or any other unauthorized use which may damage or alter the soil or site characteristics.

Section 14. [13.] Variances. (1) Any person owning a site where an on-site sewage disposal system is proposed to be installed may request, in writing, to the local board of health, or their designated agents, consideration for the granting of a variance to specific portions of this regulation.

(2) Written requests shall include all pertinent information about the site, the specific portion(s) of the regulation requested to be waivered, the specific reasons for the request, and documented evidence justifying the granting of the variance.

(3) Such requests shall be acted upon as soon as practicable by the local board of health, or their designated agents, and a written decision, either denying the variance with reasons for denial, or granting the variance with or without stipulations or restrictions, shall be presented to the person so applying within five (5) working days of the decision.

(4) Persons requesting variances shall have the right to appear in person with counsel and/or expert professional witnesses before the local board of health, or their designated agents, either to present the request, or to appeal a variance decision.

(5) If such a hearing is requested, the local board of health, or their designated agents, shall set a date and time for the hearing, as soon as practicable, and shall so notify in writing the person requesting same of such date and time. Notification shall be made within five (5) working days of receipt of the request and at least two (2) days prior to the date of the hearing.

(6) Decisions on the granting or denial of variances shall be based upon the evidence presented by the requestee; the evidence presented by the certified inspector(s) involved with the site in question; as well as supportive evidence for either side presented by expert professional witnesses.

(7) Decisions shall be influenced by the requirements of the On-site Sewage Systems Law and these regulations, and by the presence or absence of reasonable assurances, derived from evidence presented, that the granting of such variance will not result in the creation of groundwater contamination or the surfacing of effluent, and creation of a health hazard or public health nuisance.

(8) Variances shall not be granted for the following purposes:

[(a) Use of unapproved system components;]

[(b) Use of improperly constructed or designed systems, in lieu of redesign and/or reconstruction;]

[(c) Placement of lateral field within twelve (12) inches of, or below the upper limits of a water table;]

[(d) Placement of lateral field within twelve (12) inches of, or into bedrock;]

(a) [(e)] Waiver of site evaluations or system inspections;

(b) [(f)] Reduction of required system size when modified or alternative systems can be used to provide an equivalent system in the available area on the site;

(c) [(g)] In any instance where site and/or system modifications or alternative systems can overcome site limitations.

(9) Variances granted which may have a direct effect upon the future use or marketability of a site or subdivided parcels of that site, shall be made a permanent record, and filed at the local health department in the county where the site is located.

Section 15. [14.] Exemption. The provisions of this regulation shall not apply to on-site sewage disposal systems in use or for which a valid permit has been issued prior to the effective date of this regulation, unless such system requires future repair or alteration due to malfunction, damage, or increase in waste loading due to a change in usage of the structure(s) served by the system. If such occurs, this regulation shall be enforced only as regards the specific repair or alteration work required.

[Section 15. Effect on Local Regulations. This regulation shall not supersede more stringent regulations of any local governmental body.]

[Section 16. Effective Date. This regulation shall become effective on October 1, 1985.]

C. HERNANDEZ, MD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 8, 1988
FILED WITH LRC: July 13, 1988 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1988 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 August 17, 1988, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dudley J. Conner

(1) Type and number of entities affected: 300 developers, 1,000 builders, 1,500 installers of on-site sewage disposal systems, and 7,800 consumers using such systems.

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

1. First year: $1,000,000 direct savings due to removal of mandatory percolation testing. Other amendments to present requirements may result in additional savings or slight cost increases for all parties in specific individual cases.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): New technology incorporated in amendments may allow use of previously unacceptable areas for system installation resulting in decreasing costs; competition amongst installers and others would promote competency and cost efficiency of benefit to consumer.

(b) Reporting and paperwork requirements: Amendments to current regulation will result in decreased reporting and paperwork relative to percolation tests as they will not be required for an average 7,700 sites per year.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Savings in elimination of printing, mailing and handling, costs, etc., for official percolation test reporting forms (average 10,000 copies per year). Other costs should remain the same as under current version (unamended) of regulation.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reduction as in (1)(b) above.

(3) Assessment of anticipated effect on state and local revenues: Should have no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Current regulations were best alternative at time of adoption, the amendments reflect new technology, clarifications, and compliance with HB 910 relative to percolation tests. Alternatives are - no change, which would stifle development growth by limiting building site approval alternatives; or, regression to earlier regulations which were outdated and unenforceable as written.

(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: No conflict

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes_X_ No___

Relates to on-site sewage disposal systems programs of local health departments who are agents of the cabinet. This program is mandatory.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation affects local health deparatments as mentioned above, and may affect other divisions whenever an on-site sewage disposal system is installed to serve any public facility owned or operated by local government. This regulation, however, has been in effect since October 15, 1985, and this amended version will have minimal impact other than cost savings due to elimination of percolation tests for nearly all sites.

3. State the aspect or service of local government to which this administrative regulation relates. The enforcement of the on-site sewage disposal systems programs carried out by local health department certified inspectors and the evaluation and inspection services they perform.

4. How does this administrative regulation affect the local government or any service it provides? See above comments. An adjunct of the amendments to this regulation would be to provide local governments with cost saving alternatives to conventional sewer/treatment plant sewage disposal for areas or communities which need sanitary sewage disposal but cannot afford the high cost of conventional systems.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:100. Claimant's reporting requirements.

RELATES TO: KRS 341.350, 341.380

PURSUANT TO: KRS 13A.100, 194.050, 341.115

NECESSITY AND FUNCTION: This regulation sets forth the reporting requirements that the claimant must meet to draw benefits and the date when the claim will be valid. It further sets out the length of time a claim may be backdated and the procedures for mail claims.

Section 1. Registration for Work. A worker must be registered for work <u>with the Department for Employment Services according to such procedures as are approved by the secretary</u> before he shall be eligible to receive benefits. <u>Procedures for worker registration are contained in section 2030 of the local office manual.</u> [The completion of an initial application for benefits shall also serve as the registration for work.] Such registration shall remain active during the worker's benefit year as defined in KRS 341.090(2).

Section 2. Initial and Reopened (Additional) Claims for Benefits. (1) In order for a worker to file an initial or reopened claim for benefits he shall report in person to a public employment office and complete such forms and conform to such procedures as are approved by the secretary. Such procedures are contained in the local office manual in the following sections: 2010, which requires the claimant to provide proper identification before filing a claim for benefits; 2020, which provides for scheduling of claimants for fact-finding

interviews to resolve potential issues, describes the forms to be completed by the claimant and claimstaker and provides for exceptions to in-person reporting requirements; 2060, which provides completion instructions for the UI-401, Initial Claim for Benefits; 2065, which requires video entry of a group classification code by which the claimant is scheduled for eligibility review interviews; 2120 and 2130, which relate to the completion of the UI-465A, Eligibility Review Form, and guidelines for assignment to a particular group; 2160, which provides instances when claimants will be required to register for work with the Department for Employment Services; 2170, which requires the conduct of a benefit rights interview; 2230, which provides procedures for taking additional and reactivated claims for benefits; and 3040, which provides continued claims procedures for assuring that the claimant has registered for work, has certified that he meets the eligibility requirements, has presented proper identification and has not claimed benefits by mail unless permitted to do so.

(2) In areas serviced by a full-time public employment office, such initial or reopened claim shall be dated as of the first day of the week in which such worker first reports to such public employment office for the purpose of filing a claim for benefits.

(3) In areas serviced by an itinerant public employment office, such initial or reopened claim shall be dated as of the first day of the week in which the worker becomes unemployed provided he reports to such itinerant office for the purpose of filing a claim for benefits on the first day such office is open following his last day of work; otherwise such claim shall be dated as of the first day of the week in which the worker reports at an itinerant or full-time public employment office.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section such initial or reopened claim may be dated as of the first day of any week of unemployment in which the worker worked less that his customary full-time hours for his regular employer, provided such worker reports to a public employment office for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for such week.

(5) Upon the presentation by the worker of reasons found to constitute good cause for failure to report at an earlier date, the secretary may authorize the backdating of initial or reopened claims in an area serviced by a full-time public employment office to the first day of a week which ended not earlier than fourteen (14) days prior to the day on which he first reported or indicated his desire to file such claim, and in an area serviced by an itinerant office to the first day of the week which ended not earlier than twenty-eight (28) days prior to the day on which he first reported.

Section 3. Continued Claims for Benefits. (1) In order for a worker, who has filed his initial claim for benefits and has established a benefit year, to file a continued claim for benefits he shall report in person, except as hereinafter provided, to a public employment office and complete such forms and conform to such procedures as are approved by the secretary.

(2) Continued claims for benefits shall cover the week or the two (2) weeks of unemployment (depending on whether the worker is reporting on a weekly or biweekly basis) immediately prior to the date on which they are filed.

(3) Upon the presentation by the worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary may authorize the backdating of continued claims in an area serviced by a full-time public employment office to cover a week or weeks of unemployment ended not earlier than twenty-eight (28) days prior to the date on which they are filed and in an area serviced by an itinerant public employment office to cover a week or weeks of unemployment ended not earlier than thirty-five (35) days prior to the date on which they are filed.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, such continued claim may be dated as the first day of any week of unemployment in which the worker worked less than his customary full-time hours for his regular employer and for which week he filed a continued claim, provided such worker reports to a public employment office for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for such week.

(5) Continued claims for partial benefits shall be certified as to earnings when so required by procedures approved by the secretary, except that the failure of an employer to properly certify earnings shall not result in a denial of benefits otherwise due under the law.

Section 4. Mail Claims. (1) The secretary may establish procedures whereby an individual may file his continued claims by mail if reporting in person would require expenditure of an unreasonable amount of travel or money. Such continued claim shall cover the week or weeks indicated on the claim form.

(2) Claims filed by mail shall be considered filed on the day they are deposited in the mail and postmarked. The provisions of this regulation governing the dating and backdating of continued claims filed in areas serviced by a full-time employment office shall also apply to claims filed by mail, and unless such claims are filed within the time prescribed herein, they shall not be allowed.

Section 5. Claims by Reemployed Workers. Notwithstanding the provisions of Section 3 of this regulation, a worker, who having filed his initial claim for benefits and having established a benefit year and who by reason of having returned to full-time employment is unable to report in person to a public employment office, may file a continued claim for benefits by completing such forms in accordance with such procedures as are approved by the secretary and submitting such forms by mail to the Division of Unemployment Insurance. Such continued claim shall cover the week of unemployment indicated on the claim form provided that such week of unemployment ended not earlier than thirty-five (35) days prior to the date on which such claim was deposited in the mail.

Section 6. Eligibility Review. An unemployed worker claiming benefits shall report in person to a public employment office, as directed, on a

periodic basis for the purpose of continued benefit eligibility review.

Section 7. Failure to Comply with Regulations. Notwithstanding any other provisions of this regulation, if the secretary finds that the failure of any worker to file a claim for benefits, and register for work within the specified time, was due to the failure on the part of the employer to comply with any of the provisions of the commission's regulations, or to coercion or intimidation exercised by the employer to prevent the prompt filing of such claim or to failure by the division's personnel to discharge necessary responsibilities, the worker shall have fourteen (14) days after he has received appropriate notice of such findings of the secretary, within which to file such claim, provided that no claim shall be allowed which is filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

JAMES P. DANIELS, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 23, 1988
FILED WITH LRC: June 30, 1988 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. in the Health Services Auditorium, Health Services Building, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James P. Daniels
(1) Type and number of entities affected: Thousands of UI claimants.
(a) Direct and indirect costs or savings to those affected: No direct or indirect costs - regulation sets out specific reporting procedures.
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: Claimants required to report in person to local DES Office to register for work.
(2) Effects on the promulgating administrative body: Provides a more effective and efficient procedure for registering claimants for work.
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Claimants required to report in person to local DES Office to register for work.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternate method of having initial application for benefits serve as work registration proved ineffective and less efficient.
(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: No additional comments necessary.
TIERING: Was tiering applied? Yes

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

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

RELATES TO: KRS 205.200(2), 205.210(1), 42 CFR 435.831, 45 CFR 233
PURSUANT TO: KRS 205.200(2)
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, [hereinafter] referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Assistance group" is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent(s), and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his[/her] eligible parent(s), the minor's parent(s) shall also be included in the assistance group if the minor's parent applied for assistance. The incapacitated natural or adoptive parent of the child(ren) who is living in the home shall be included as second parent if the technical eligibility factors are met.
(2) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent/legal guardian is considered any person under the age of eighteen (18).
(3) "Sanctioned individual" means any person who is required to be included in the assistance group but who is excluded from the assistance

group due to failure to fulfill an eligibility requirement.

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

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

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

(a) The number of hours required by the individual program for participation in a General Educational Development (GED) program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

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

(d) Eight (8) clock hours per month in a literacy program.

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

(8) "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 8 of this regulation, and any educational allowance as set forth in Section 9 of this regulation.

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

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

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

(12) "Lump sum income" means income that [is not earned,] does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

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

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

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

(b) Home furnishings, including all appliances;

(c) Clothing;

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

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

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

(g) One (1) burial plot/space per family member;

(h) Funeral agreements not to exceed maximum equity of $1,500 per family member;

(i) Real property which the assistance group is making a good faith effort to sell. This exemption shall not exceed a period of nine (9) months and is contingent upon the assistance group agreeing to repay AFDC benefits received beginning with the first month of the exemption. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment. The amount of the repayment shall not exceed the net proceeds of the sale. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Other items/benefits mandated by federal regulations.

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

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

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

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

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

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

(a) The standard of need increases and the amount of grant the assistance group would have received also changes.

(b) The income received has become unavailable to the assistance group for reasons beyond their control.

(c) The assistance group incurs and pays medical expenses in accordance with 42 CFR 435.831(C).

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

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

(a) Disregards applicable to stepparent income and/or income of the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with the assistance unit, as set forth in Section 5 of this regulation;

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

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

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

(e) Earnings received by a dependent child from participation in the Summer Youth Program, Work Experience Program, Limited Work Experience Program, and Tryout Employment Program under the Job Training Partnership Act (JTPA) for a period not to exceed six (6) months within a given calendar year, effective March 1, 1988;

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

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

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

(i) Nonemergency medical transportation payments;

(j) Principal of loans;

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

(l) Highway relocation assistance;

(m) Urban renewal assistance;

(n) Federal disaster assistance and state disaster grants;

(o) Home produce utilized for household consumption;

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

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

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

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

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

(u) Payments to volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113 except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

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

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

(x) Payments made under the Low Income Home Energy Assistance Act (LIHEAP) and other energy assistance payments which are permitted to be excluded pursuant to 45 CFR 233.53 (c)(5)(i);

(y) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(z) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance; and

(aa) The first thirty (30) dollars of small nonrecurring gifts received per calendar quarter for each individual included in the assistance group.

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

be applied:

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

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of seventy-five (75) dollars for full-time and part-time employment; and

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

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

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

(b) First thirty (30) dollars and one-third (1/3) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. The one-third (1/3) portion of this disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his[/her] earned income. The thirty (30) dollar portion of this disregard shall be applied concurrently with the one-third (1/3) disregard, however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence. These disregards shall be applied in accordance with 45 CFR 233.20(a)(11)(i)(D) and 45 CFR 233.20(a)(11)(ii)(B) and shall not be available to the individual until he/she has not been a recipient for twelve (12) consecutive months; and

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

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

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

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

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

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

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

5. Effective February 1, 1988, the child care arrangement is terminated through no fault of the client; or

6. Effective February 1, 1988, the available child care does not meet the needs of the child(ren), e.g., handicapped or retarded children.

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

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

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

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

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

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

(5) Sanction exception. The earned income of sanctioned individuals shall be counted without providing the exclusion/disregards in either subsections (2) and (3) of this section.

Section 5. Income and Resources. Income and resources of a stepparent living in the home with a dependent child and[/or] parent(s)/legal guardian(s) living in the home with a minor parent/legal guardian but whose needs are not included in the grant are considered as follows:

(1) Income. The gross income is considered available to the assistance group, subject to the following exclusions/disregards:

(a) The first seventy-five (75) dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for the appropriate family size, for the support of the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian and any other individuals living in the home but whose needs are not taken into consideration in the AFDC eligibility determination and are or <u>may</u> [could] be claimed by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian as dependents for purposes of determining his[/her] federal personal income tax liability;

(c) Any amount actually paid by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian to individuals not living in the home who are or <u>may</u> [could] be claimed by him[/her] as dependents for purposes of determining his/her personal income tax liability;

(d) Payments by the stepparent and[/or] parent(s)/legal guardian(s) of a minor parent/legal guardian for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent and[/or] parent(s)/legal guardian(s) of a minor parent/legal guardian receiving Supplemental Security Income (SSI) under Title XVI.

(2) Sanction exception. The needs of any sanctioned individual are not eligible for the exclusion(s) listed in this section.

(3) Resources. Resources which belong solely to the stepparent and[/or] parent(s)/legal guardian(s) of a minor parent/legal guardian are not considered in determining eligibility of the parent or the assistance group.

Section 6. Alien Income and Resources. <u>For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.</u> The gross non-AFDC income and resources of an alien's sponsor [and sponsor's spouse (if living with the sponsor) hereinafter referred to as sponsor]

shall be deemed available to the alien(s), subject to disregards as set forth below, for a period of three (3) years following entry into the United States. If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens. A sponsored alien is ineligible for any month in which adequate information on the sponsor/sponsor's spouse is not provided. If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization is no longer in existence or does not have the financial ability to meet the alien's needs. The provisions of this section shall not apply to those aliens identified in 45 CFR 233.51(e).

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

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

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

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

(d) Actual payments of alimony or child support paid to nonhousehold members; and

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

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

Section 7. Earned Income Tax Credit (EITC). In the case of an applicant or recipient of AFDC, EITC payments shall be considered as earned income when received.

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

Effective July 1, 1988

Number of Eligible Persons	Monthly Standard
1 child	$155 [147]
2 persons	$188 [179]
3 persons	$218 [207]
4 persons	$272 [259]
5 persons	$319 [303]
6 persons	$360 [342]
7 or more persons	$401 [381]

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

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

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

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

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

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

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

	1 Child		2 or More Children	
	Full-Time	Part-Time	Full-Time	Part-Time
Literacy	$ 20	-	$ 25	-
GED	$ 94	-	$117	-
Elementary School/ Junior High	$174	-	$218	-
High School	$174	-	$218	-
Vocational School	$174	-	$218	-
College/University	$174	$103	$218	$129

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

(a) Literacy:

Type of Program	Maximum
Literacy	24 months

(b) High school level.

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

Type of Program	Maximums
General Educational Development (GED)	16 months
High School (includes primary and secondary)	27 months

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

(c) Posthigh school level. A student may change programs within this level, however, the

cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

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

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

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

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

(a) The overpaid assistance unit;

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

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

(3) Overpayments shall be recovered through:

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

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

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

(4) Overpayments may be waived for inactive nonfraud cases involving less than thirty-five (35) dollars in overpayment.

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

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

[Section 11. Provisions contained in this regulation shall become effective April 1, 1988 unless otherwise specified.]

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1988
FILED WITH LRC: June 30, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1988 at 9 a.m. in the Health Services Auditorium, Health Services Building, 1st Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 17, 1988 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: All AFDC families (average monthly number of 58,600). The increase in the stanadard of assistance results in a corresponding increase in the Gross Income Scale, thus making more people eligible. It is estimated that an additional 3,400 people will become eligible, or an additional 1,300 families.

(a) Direct and indirect costs or savings to those affected: This will amount to an increase in standard available to each family in the following amount:

Size of Family	Amount of Monthly Increased Standard
1	$ 8
2	$ 9
3	$11
4	$13
5	$16
6	$18
7 or more	$20

1. First year:

Size of Family	Amount of Yearly Increased Standard
1	$ 96
2	$108
3	$132
4	$156
5	$192
6	$216
7 or more	$240

2. Continuing costs or savings: Similar to the first year.

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: Direct costs of the 5 percent increase - $3,216,700 in state funds and $8,583,300 in federal funds.

2. Continuing costs or savings: Similar to the first year costs with changing state share percentages annually.

3. Additional factors increasing or decreasing costs: The increase in the standard of assistance results in a corresponding increase in the Gross Income Scale, thus making more people eligible. This has been included in the 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: No available alternatives identified.

(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. Eligibility conditions for AFDC must be applied on a consistent and equitable basis througout the state in accordance with federal regulations at 233.10(a)(1).

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

904 KAR 2:020. Child support.

RELATES TO: KRS Chapters 205, 405, 406, 407, 45 CFR Parts 301-307 [205.795]
PURSUANT TO: KRS 205.795, 405.520
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility for administering the Child Support Program in accordance with Title IV-D of the Social Security Act and KRS 205.710 to 205.800 and 205.992. The cabinet is required by the Social Security Act to make efforts to establish paternity and[/or] secure support from [absent] parents of children receiving public assistance as a result of desertion or abandonment or due to birth out-of-wedlock and for other children on application. KRS 205.795 and 405.520 empower[s] the secretary to adopt regulations pertaining to the administration of the Child Support Program. This regulation specifies the procedure for the operation of the program.

Section 1. [4.] Definitions. In addition to the terms defined in KRS 205.710 the following terms shall be defined as set forth below: [(1) "Cabinet" shall mean the Cabinet for Human Resources.]

[(2) "Secretary" shall mean Secretary of the Cabinet for Human Resources or his designee.]

[(3) "Court order" shall mean any judgment, decree, or order of the courts of this or any other state.]

[(4) "Dependent child" or "needy dependent child" shall mean any person under age eighteen (18) who is not otherwise emancipated, self-supporting, married or a member of the Armed Forces of the United States and is a recipient of or an applicant for public assistance or who has applied for child support services in accordance with Title IV-D of the Social Security Act.]

[(5) "Duty of support" shall mean any obligation of support imposed or imposable by law or by court order, decree, or judgment whether interlocutory or final, and includes the duty to pay arrearages of support past due in addition to medical support whenever health care coverage is available at a reasonable cost.]

[(6) "Parent" shall mean the natural or adoptive parent of a child and includes the father of a child born out-of-wedlock if paternity has been established in a judicial proceeding or in any manner consistent with the laws of this state.]

(1) [(7)] "AFDC recipient" [shall] means a child or caretaker relative who is receiving AFDC as prescribed by Title IV-A of the Social Security Act.

(2) [(8)] "Cooperation" [shall] means the act of providing to the IV-D agency or the responsible local official any verbal or written information or documentation needed by the IV-D agency or local official for child support activities, and otherwise complying with the requirements of the Child Support Program.

(3) [(9)] "Good cause" [shall] means that the public assistance recipient has a valid and acceptable reason (as determined by the cabinet) for failing to cooperate in activities related to the Child Support Program.

(4) [(10)] "Nonpublic assistance individual" [recipient" shall] means any child or family who does not receive public assistance, but does receive child support services based on an application filed with the IV-D agency or with a responsible local official who has entered into a written agreement with the IV-D agency.

(5) [(11)] "Responsible local official" [shall] means the elected or appointed official in a political subdivision who is legally responsible for law enforcement activities and has entered into a written agreement with the IV-D agency.

(6) [(12)] "Title IV-D agency" [shall] means the organizational unit in the state that has responsibility for administering the Title IV-D (Child Support) Program.

(7) [(13)] "Title IV-A agency" [shall] means the organizational unit in the state that has responsibility for administering the Title IV-A (AFDC) program.

(8) [(14)] "Title IV-E agency" [shall] means the organizational unit in the state that has responsibility for administering the Title IV-E (foster care maintenance and adoption assistance) program.

(9) [(15)] "Paternity blood tests" [shall] means those tests used in contested paternity actions including, but not limited to, ABO and human leucocyte antigen (HLA) tests administered by qualified laboratories or medical personnel.

[(16) "Public assistance" shall mean money grants, assistance in kind or services to or for the benefit of needy aged, needy blind, needy permanently and totally disabled persons, needy children or persons with whom a needy child lives, or a family containing a combination of these categories.]

[(17) "Consumer reporting agency" shall mean any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Section 2. [1.] Compliance with Federal Regulations. The cabinet shall administer the Kentucky Child Support Program in accordance with Title IV-D of the Social Security Act and Title 45 CFR Sections 301, 302, 303, 304, 305, 306 and 307.]

Section 3. [2.] Relation to Title IV-A Program. The cabinet shall administer the Kentucky Child Support Program, as the program relates to Title IV-A recipients, in accordance with regulations cited in Section 2 [1] of this regulation and Title 45 CFR Sections 205, 232, 233, 234, and 235.

Section 4. [3.] Relation to Title IV-E Program. The cabinet shall administer the Kentucky Child Support Program, as it relates to Title IV-E recipients, in accordance with regulations cited in Section 2 [1] of this regulation and Title 45 CFR Section 1356.

Section 5. Initiation of Support Action. Support activity shall be initiated upon referral of forms from the Title IV-A or Title IV-E agency or upon application of a nonpublic

assistance individual [recipient] to the IV-D agency or its authorized representative.

Section 6. Safeguarding Information. Pursuant to 45 CFR 303.21 and consistent with KRS 205.175 and 205.990, the cabinet may [will] disclose information regarding recipients of child support services only to public officials or the recognized persons, such as private attorneys, acting on behalf of the recipients of child support services, who require the information for their official duties and to other persons and agencies involved with the administration of the Child Support Program or other federally assisted programs which provide cash benefits or services to needy individuals.

(1) Pursuant to 45 CFR 303.21(b), the IV-D agency may not disclose to any committee or legislative body any information that identifies by name or address any applicant or recipient.

(2) Pursuant to 45 CFR 303.105 and consistent with KRS Chapter 205, the cabinet shall disclose arrearage information to consumer reporting agencies in cases where the overdue support is greater than $1,000. The cabinet may release arrearage information when the amount owed is less than $1,000.

(a) The consumer reporting agency shall [must] submit a written request for such information to the cabinet.

(b) The cabinet may charge the consumer reporting agency a fee which may not exceed the cabinet's cost of providing the information.

(c) The cabinet shall notify the obligor [parent owing the support] of the proposed release of information. The notification shall [must] inform the obligor [parent] of the methods available to contest the accuracy of the information.

(d) The obligor [parent] shall be given a minimum of twenty (20) days from the date of the above notice to contest the accuracy of the information.

Section 7. Establishing Paternity. In establishing paternity for children in the Child Support Program pursuant to the Social Security Act, the cabinet may utilize any of the provisions which are contained in Kentucky Revised Statutes related to paternity.

Section 8. Securing and Enforcing Support. In securing or enforcing support for children in the Child Support Program pursuant to the Social Security Act, the cabinet may utilize any of the provisions which are contained in Kentucky Revised Statutes related to support.

Section 9. Assignment of Support to IV-D Agency. (1) By accepting public assistance for or on behalf of a needy dependent child, a public assistance recipient assigns to the cabinet the right to all past due and future child support including any voluntary contributions made by the absent parent. Any support income received by AFDC recipients must be forwarded to the cabinet no later than the tenth day of the month following receipt.

(2) Nonpublic assistance recipients may assign their support rights to the cabinet, but these recipients are not required to make such an assignment.

Section 10. Agency Receipt of Support Payments. (1) When the support payment is made payable to the cabinet, money received is credited to the account of the obligor [noncustodial or absent parent].

(2) If the amount of the current month's support collection or the court ordered amount, whichever is lower, exceeds the AFDC grant by fifty (50) dollars or more, the IV-D agency will notify the IV-A agency, as required by 45 CFR 302.32.

Section 11. Nonpublic Assistance Individuals [Recipients]. The IV-D agency will provide all services to individuals who are not recipients of public assistance benefits as provided in 45 CFR 302.33(a). [Pursuant to KRS 205.721,] The cabinet shall continue to provide IV-D services [for the period of not less than five (5) months] after the family's AFDC benefits have been discontinued[. These services shall be continued indefinitely] unless the client requests discontinuance of IV-D services.

(1) An application fee for these services shall [must] be paid in accordance with the following fee schedule: [45 CFR 302.33 and KRS 205.721.]

YEARLY NET INCOME	FEE
$ 0 to $2,000	=$ 5.00
2,001 to 3,000	= 8.00
3,001 to 4,000	= 10.00
4,001 to 5,000	= 13.00
5,001 to 6,000	= 15.00
6,001 to 7,000	= 18.00
7,001 to 8,000	= 20.00
8,001 to 9,000	= 23.00
9,001 to above	= 25.00

(2) In addition to the fees provided for in 42 U.S.C. 453(e)(2) and 463 regarding the federal parent locator service, the state may charge a fee for federal income tax refund intercept services in accordance with 45 CFR 303.72. Additionally, any other fee required by [which must be paid to] the federal government for services shall [will] be collected by the IV-D agency from the applicant.

Section 12. Cooperative Agreements. Pursuant to 45 CFR 302.34, 42 USC 654(7) and KRS 205.800, all eligible local officials may enter into a written agreement with the cabinet to cooperate in activities relative to the Child Support Program when approved by the cabinet. When officials enter into an agreement with the cabinet, federal financial participation (FFP) for child support activities shall [will] be provided pursuant to federal laws and regulations when billing is submitted in accordance with procedures established by the cabinet. The officials shall provide the cabinet in timely fashion such statistical information concerning IV-D activities as prescribed by the cabinet in the manner and form prescribed by the cabinet. If no agreement is executed, referrals for child support activities may be made to local law enforcement officials in accordance with the official's statutory obligations, but the officials will not be eligible for reimbursement as specified above.

Section 13. Distribution of Support Payments. Distribution of support payments received by the cabinet are made in accordance with 45 CFR 302.32, 302.38, 302.51, and 302.52. The first

fifty (50) dollars, up to the obligation amount, of all child support collected in a month by the cabinet for an AFDC family [assistance unit] which represents the current month's support obligation shall be forwarded [returned] to the family [assistance unit. Rights related to hearings as written in 904 KAR 2:055 do not apply to payment of this support collected by the IV-D agency].

Section 14. Good Cause for Refusal to Cooperate. (1) The IV-D agency or its authorized representative shall [must] immediately notify the IV-A [or IV-E] agency when [at such time as] the recipient refuses to cooperate in support enforcement efforts. If the IV-A [or IV-E] agency [should] determines, pursuant to laws and regulations, that the recipient has a good cause for failing to cooperate and that pursuit of support action would be detrimental to the best interests of the child, the IV-D agency shall [will] not pursue any action in the child's behalf.

(2) If the agency determines that the recipient has good cause for not cooperating but that additional support action would not harm the child, the IV-D agency may proceed in the name of the cabinet for the use of and in behalf of the minor dependent child pursuant to federal laws and regulations.

Section 15. Parent Locator Service. The cabinet shall use available resources to locate absent parents for children in the Child Support Program in accordance with Kentucky Revised Statutes and applicable federal laws and regulations.

Section 16. Paternity Blood Testing. Pursuant to 45 CFR 303.5(c) the IV-D agency shall identify laboratories within the state which perform legally and medically acceptable blood tests, including ABO and HLA tests, which tend to include or exclude an alleged father in paternity proceedings under KRS Chapter 406. The IV-D agency shall make a list of such laboratories available upon request. In addition, the cabinet shall provide a list of all such laboratories to the Kentucky Bar Association and to the Administrative Office of the Courts for distribution to appropriate agencies and individuals on an annual basis.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 7, 1988
FILED WITH LRC: July 13, 1988 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall
(1) Type and number of entities affected: 3,100 applicants for non-AFDC services.
(a) Direct and indirect costs or savings to those affected:
1. First year: Application fee ranging from $5 to $25 limited to a maximum of $25 by federal regulations.
2. Continuing costs or savings: This is a one-time application fee.
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: $46,000 revenue for IV-D program.
2. Continuing costs or savings: Continuing revenue will depend upon the number of individuals who apply for services.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Fee paid by individuals applying; therefore no impact on local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method considered as methodology mandated by statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(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 Social Insurance
Division of Management & Development
(Proposed Amendment)

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

RELATES TO: KRS 194.050
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by Public Law 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation states [sets forth] the eligibility

and benefits criteria for each of three (3) [two (2)] components of energy assistance, subsidy, [and] crisis and emergency summer aid under the Home Energy Assistance Program (HEAP).

Section 1. [2.] Definitions. Terms used in HEAP are defined as follows:

(1) "Principal residence" is the [that] place where a person is living voluntarily and not on a temporary basis; the place he[/she] considers home; the place to which, when absent, he[/she] intends to return; and the [such] place is identifiable from other residences, commercial establishments, or institutions.

(2) "Energy" means [is defined to include] electricity, gas, and any other fuel [such as coal, wood, oil, bottled gas, etc.,] that is used to sustain reasonable living conditions.

(3) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(4) "Economic unit" is one (1) or more persons sharing common living arrangements.

(5) "Subsidy component" is the [that] portion of benefits reserved as energy assistance for heating.

(6) "Crisis component" is the [that] component administered by local organizations under contract with the cabinet to provide heating crisis assistance. [fuel, heaters, blankets and/or sleeping bags, vouchers to purchase these items, or minor repair of the heating system to eligible households who are without heat, or will be without fuel within five (5) days, or receive a notice of disconnection of service, or require a heat system repair to obtain adequate heat.]

(7) "Life threatening situation" under the crisis component means [is defined as] without heat or will be without heat within forty-eight (48) hours and temperatures at a dangerous level for household members. Under the emergency summer aid program it means the life of a household member is threatened due to a medical condition and that loss of life may be prevented by receipt of assistance under this component.

(8) "Emergency summer aid program" is the component administered by local organizations under contract with the cabinet to provide cooling assistance to medically needy households.

(9) An "authorized representative" is the person applying on behalf of a household who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

Section 2. [1.] Application. Each household or authorized representative of the household requesting assistance shall [be required to] complete an application and provide [such] information [as may be deemed] necessary to determine eligibility and benefit amount [in accordance with the procedural requirements prescribed by the cabinet. An "authorized representative" is that person applying on behalf of a household who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf]. An application shall not be considered completed until all information needed [necessary] to determine eligibility and benefit amount is received.

Section 3. Eligibility Criteria. (1) A household shall [must] meet the following conditions of eligibility for receipt of a HEAP payment under the subsidy and crisis components:

(a) [For purposes of determining eligibility,] The amount of continuing and noncontinuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application shall [will] be considered. Income received on an irregular basis shall [will] be prorated.

(b) Gross income for the calendar month preceding the month of application shall [must] be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from [consideration as] income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant shall [must] spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and JTPA) normally disregarded in AFDC, federal payments or benefits which shall [must] be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	$ 504	$ 6,050
2	678	8,140
3	852	10,230
4	1,027	12,320
5	1,201	14,410
6	1,375	16,500

(c) For each household member more than six (6), the above income eligibility limitation for six (6) shall [will] be increased by $174 monthly or $2,090 yearly [for each additional household member].

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

(e) Applicants for the crisis component shall [must] be without heat, [or will] be without fuel within five (5) days, [or] have received a notice of disconnection of service, or require a heat system repair to obtain adequate heat.

(2) Households are eligible to receive benefits under the subsidy component once, [and] under the crisis component not to exceed the maximum amount of benefits and under the emergency summer aid program not to exceed the benefit maximums.

(3) Applicants for the emergency summer aid program shall meet the income and resource criteria under subsection (1)(a) through (d) of this section and have a written statement from a physician or registered nurse that a household member is medically in need of assistance under this component. For life threatening situations, a written statement from a physician attesting to a life threatening situation is required.

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

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

Benefit Scales
Subsidy Component

Scale A.
Energy Sources: Electricity

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$123	$135
$401 - $800	$105	$117
Over $800	---	$101

Scale B.
Energy Sources: LP Gas (Propane), Fuel Oil, Kerosene, Natural Gas

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$113	$125
$401 - $800	$ 95	$107
Over $800	---	$ 88

Scale C.
Energy Sources: Coal, Wood

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$100	$112
$401 - $800	$ 82	$ 94
Over $800	---	$ 75

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

(3) Benefits to eligible households under the crisis component shall be in the form of fuel or other energy for heating, heaters, blankets, [and/or] sleeping bags, vouchers to purchase these item, or repair to a heating system to obtain adequate heat. The contracting agency shall [will] determine the type and value of assistance necessary to alleviate the crisis, not to exceed a maximum of $300 total benefit value for each [per] eligible household.

(4) Benefits under the emergency summer aid program shall be the minimum type and amount needed to alleviate the crisis as follows:

(a) A maximum of two (2) fans per household may be provided not to exceed a total of eight (80) dollars.

(b) An additional payment of up to $100 for energy for cooling may be made if the eligible household is without energy for cooling or has received a disconnection of service notice for their cooling energy.

(c) For households with members in a life threatening situation, up to $350 for each household may be provided in the form of fans, air conditioners, repairs of cooling systems, or energy payments (when without or threatened to be without energy for cooling). If a local administering agency has donated materials for cooling, the delivery and installation of these donated materials may be provided.

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

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

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

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

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

(5) For the emergency summer aid program, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency in the type and amount determined by the contracting agency to be the minimum amount needed.

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

Section 7. Time Standards. Under the subsidy component, the cabinet shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days. Under the crisis component and the emergency summer aid program, completed applications shall [will] be processed so [such] that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours.

Applicants under the crisis component shall [will] have [no more than] ten (10) working days from the date of application to provide information necessary to complete the application. Applicants under the emergency summer aid program shall have five (5) working days from the date of application to provide information needed to complete the application.

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP depending upon the availability of funds:

(1) Applications for the subsidy component shall be accepted from households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits due to [on the basis of] 100 percent disability beginning October 19, 1987 and ending by [no later than] October 30, 1987.

(2) Applications for the crisis component shall be accepted beginning January 11, 1988 and ending by [no later than] April 29, 1988.

(3) Applications shall be processed in the order taken until funds are expended. HEAP subsidy component shall be terminated by the secretary when actual and projected component expenditures have resulted in utilization of available funds or December 30, 1988[, whichever comes first].

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

(5) Applications for the emergency summer aid program shall be accepted beginning July 11, 1988 and ending by September 15, 1988.

Section 9. Allocation of Funds. (1) Up to fifteen (15) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) Up to $10,512,922 of benefit funds shall be reserved for the crisis component. Eighty-five (85) percent of the funds reserved for the crisis component shall be allocated, by local administering agency, based upon the 1980 Census poverty levels of the counties served by the local administering agency [in accordance with the 1980 Census]. Fifteen (15) percent of the funds plus any additional funds made available from the subsidy component or from the Energy Assistance Trust Fund shall be held by the contracting agency as a contingency fund to be allocated to any local administering agency of the state chosen at the discretion of the contracting agency to provide low income home energy assistance in accordance with its contract. On February 8, 1988, all unobligated allocations may be reallocated [as necessary] by the contracting agency with the concurrence of the Department for Social Insurance.

(3) Up to $5,000,000 of benefit funds [available under Public Law 97-35] shall be reserved for the subsidy component.

(4) Up to $400,000 of the contingency fund under subsection (2) of this section shall be reserved to assure component availability until March 15, 1988 for emergency crisis assistance for households who are without heat.

(5) Up to $25,000 shall be reserved for the Preventive Assistance Program administered by the Department for Social Services to assist families with an energy payment not to exceed $300 for each [per] family if the payment shall [will] prevent the removal of a child from a family or if it shall [will] assist in reuniting a child with the family.

(6) Up to $450,000 shall be reserved as benefits under the emergency summer aid program. Seventy (70) percent of these funds shall be allocated to the local administering agencies based upon the 1980 Census poverty levels of the counties served by the local administering agencies. Thirty (30) percent shall be reserved as a contingency fund by the contracting agency and provided as needed to local administering agencies to assist households in a life threatening situation after the local agency allocation is obligated.

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

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

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

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

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

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

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 8, 1988
FILED WITH LRC: July 13, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: This regulation is being amended to make technical changes needed due to enactment of changes to KRS Chapter 13A made by the 1988 General Assembly, and to provide for the implementation of the Emergency Summer Aid Program (ESAP) under the federal fiscal year 1988 Low Income Home Energy Assistance Program (LIHEAP) block grant. The ESAP shall provide cooling assistance to up to 11,250 low income medically needy households and shall be administered locally by the state's 23 community action agencies (CAA). The number of households assisted may be substantially lower depending upon the value of assistance provided. Determinations of medical need shall be based upon written statements by physicians or registered nurses.

(a) Direct and indirect costs or savings to those affected: Eligible households to the extent of available funds shall receive the minimum amount necessary to alleviate the cooling crisis as follows:

- a maximum two (2) fans not to exceed a total value of $80;
- when the household is without cooling energy or has received a disconnection of service notice, an additional benefit of up to $100 may be provided as necessary;
- in a life threatening situation, up to $350 may be provided in the form of fans, air conditioners, repairs of cooling systems and energy payments (when without or threatened to be without cooling energy).

1. First year: A total of up to $450,000 in benefits shall be provided. $50,000 (10% of the total ESAP funds which is the maximum amount permitted under the federal law) shall be made available to reimburse reasonable and allowable administrative costs of the community action agencies.

2. Continuing costs or savings: The ESAP is an emergency program to help alleviate the problems experienced by medically needy, low income Kentuckians due to the extreme heat of this summer. The Cabinet for Human Resources (CHR) does not anticipate continuing this program.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The CHR is not aware of any additional factors increasing or decreasing costs. This regulation has no effect upon competition.

(b) Reporting and paperwork requirements: All applicants for the ESAP shall complete an application and will provide materials necessary for verification of eligibility. The community action agencies shall report services provided and submit invoices necessary for reimbursement. The CAAs shall be subject to reporting and paperwork requirements necessary for appropriate administration of energy assistance programs. Physicians and registered nurses shall complete medical need forms provided by the local administering agencies to applicants.

(2) Effects on the promulgating administrative body: The Department for Social Insurance (DSI) shall be responsible for promulgating a LIHEAP state plan amendment and contract amendment for the the administration and implementation of the ESAP and necessary programmatic and fiscal monitoring. Also the DSI shall be responsible for making necessary federal reports.

(a) Direct and indirect costs or savings: Up to 10% of the LIHEAP grant payable to (including Energy Assistance Trust Funds) and not transferred may be used for administration.

1. First year: Normal costs associated with program administration and contract management shall be incurred.

2. Continuing costs or savings: The DSI does not anticipate continuing the program.

3. Additional factors increasing or decreasing costs: The DSI is not aware of additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Administrative requirements for grants under appropriate state and federal law and regulations shall be met. ESAP activities will be included in the annual federal state plan and reports.

(3) Assessment of anticipated effect on state and local revenues: The ESAP will have no impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The federal statute requires that crisis assistance be provided within 48 hours and in life threatening situations within 18 hours. It also requires that in selecting local administrative agencies, preference be given to agencies that administered similar energy assistance programs prior to enactment of the block grant statute and that the local administrative agencies have the programmatic and fiscal ability to appropriately administer the program. Due to these requirements, the choice of alternatives is limited to departmental administration or CAA administration. The DSI is unable to respond to the crisis within the time frames as required. The CAA's can respond in a timely manner, previously administered similar energy assistance programs and have the programmatic and fiscal capabilities required.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or governmental policy is in conflict, overlapping or a duplication.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? Yes. Tiering was applied in setting eligibility and benefit levels.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 97-35 as amended (Title XXVI of the Omnibus Reconciliation Act of 1981, as amended).

2. State compliance standards. This regulation specifies income eligibility at 110% of poverty. It also provides for local administration by community action agencies in the provision of crisis assistance for cooling.

3. Minimum or uniform standards contained in the federal mandate. The federal statute permits income eligibility to range between 110% and 150% of poverty. The statute requires that local administering agencies, which prior to enactment of the statute administered similar energy assistance programs be given priority for selection. The statute requires crisis

assistance that is weather or supply related or other energy crises.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The block grant concept permits states flexibility within broad guidelines contained in the statute. In order to target assistance to the most needy, the state has adopted the minimum income eligibility criteria permitted under the statute. Other criteria designed to target benefits to the most in need are a resources test of $5,000 and medical need. The statute does not address benefit type or amount. This regulation sets the type and value of assistance at a level to provide a reasonable benefit to serve the maximum number of households as possible with the available funds.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Due to the limited amount of funds and a need in excess of our ability to serve at the level of available funds. The imposition of stricter standards is necessary to target assistance to those households most in need.

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

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

RELATES TO: KRS Chapters 205, 405, 406, 407, and 45 CFR Parts 300-307 [205.795]

PURSUANT TO: KRS 194.050

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

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

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

[(1) Federal child support regulations at 45 CFR Parts 300-399, which set forth the requirements and guidelines for the administration of the Child Support Program, effective December 1, 1987;]

[(2) Federal Office of Child Support Enforcement Action Transmittals, which provide federal program instructions for the implementation of the child support enforcement program in accordance with federal laws and regulations, as follows: OCSE-AT-75-5, 75-6, 76-1, 76-2, 76-5, 76-7, 76-8, 76-9, 76-14, 76-21, 76-22, 76-23, 77-3, 77-14, 78-2, 78-5, 78-6, 78-8, 78-16, 78-18, 79-2, 79-3, 79-6, 79-7, 79-8, 80-5, 80-9, 80-11, 80-17, 81-7, 81-12, 81-26, 82-17, 83-15, 83-18, 84-05, and 86-04, effective May 1, 1986;]

(1) [(3)] Department for Social Insurance Child Support Manual of Procedures, which provides operational instructions and procedural detail for the implementation of the child support enforcement program, effective June 1, 1988 [December 1, 1987];

(2) [(4)] Department for Social Insurance Child Support System Handbook, which provides systems and data processing instructions for the implementation of the child support enforcement program, effective December 1, 1987;

(3) [(5)] Department for Social Insurance Child Support Action Memorandums, which provide program clarifications, instructions, and procedural detail for the implementation of the child support enforcement program, as follows: DCSE-AM-82-07, 82-36, 83-16, 83-21, 83-30, 83-31, 83-38, 83-39, [84-10,] 84-16, 84-18, 84-19, 84-36, 85-19, 85-30, [85-36, 85-42,] 86-12, 86-14, 86-15, 86-25, 87-10, and 87-12, effective June 1, 1988 [December 1, 1987]; and

(4) [(6)] Department for Social Insurance Child Support Manual of Forms, which provides forms with instructions for completion, distribution, and files maintenance for use in implementing the child support enforcement program, effective June 1, 1988 [December 1, 1987].

Section 3. All documents incorporated by reference herein may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m. Eastern time [during regular working hours] in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1988
FILED WITH LRC: June 30, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1988 at 9 a.m. in the Health Services Auditorium, Health Services Building, 1st Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 17, 1988 of their desire to appear and testify at hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: Approximately 200,000 IVD cases. Complete analysis was done when primary program regulations were amended.

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed.
(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. 45 CFR 302.10 prohibits tiering in the Child Support Program.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 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 for family size of one (1) and 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 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, nonhomestead real property, business or nonbusiness, 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 nonincome 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 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 separately identify the burial reserve amount. Interest or other appreciation of value of an excluded burial reserve is excluded so long as such amount is left to accumulate as a part of the burial reserve.
(6) Burial spaces, plots, vaults, crypts, mausoleums, urns, caskets, and other repositories which are customarily and traditionally used for the remains of deceased persons 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.
(f) Effective with regard to determinations of eligibility made on or after April 16, 1988, and applicable with regard to the usual three (3) month period for retroactive eligibility, the life interest that Medicaid applicants or recipients may have in real estate or other property shall be excluded from consideration as an available resource.

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	$2,500 [2,400]	$208 [200]
2	3,000 [2,900]	250 [242]
3	3,500 [3,400]	292 [284]
4	4,400 [4,100]	367 [342]
5	5,100 [4,800]	425 [400]
6	5,800 [5,500]	483 [459]

For each additional member, $600 annually or fifty (50) dollars monthly is added to the scale. The change shown in this section of the regulation shall be effective with regard to determinations of eligibility made on or after July 1, 1988 [December 1, 1987].

Section 4. Additional Income Considerations. (1) 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:

(a) 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.

(b) 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.

(2) The following special factors are applicable for pregnant women, infants and children eligible pursuant to Section 9401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86):

(a) Such pregnant women and children may have family income up to, but not to exceed, 100 percent of the nonfarm income official poverty guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of July 1 of the particular state fiscal year;

(b) Pregnant women, infants and children who would be eligible under the provisions of OBRA 86 except for income in excess of the allowable standard may not become eligible by spending down to the official poverty guidelines;

(c) Available liquid assets for the family may not exceed the usual upper limits specified for the medically needy, and all other resources shall be disregarded;

(d) The Aid to Families with Dependent Children (AFDC) budgeting methodology (except for application of the AFDC earned income disregard of the first thirty (30) dollars and one-third (1/3) of the remainder) shall be used; and

(e) Changes of income and, effective for determinations of eligibility made on or after August 1, 1988, changes of resources that occur after the determination of eligibility of a pregnant woman shall not affect such pregnant woman's eligibility through the remainder of the pregnancy including the usual post partum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

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, effective July 1, 1986, is forty (40) dollars monthly in lieu of the figure shown in Section 3 of this regulation. All income in excess of forty (40) dollars is applied to the cost of care except as follows:

(a) Available income in excess of forty (40) 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 but for which the individual would be eligible 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. Beginning on November 1, 1986, the additional amount specified in Section 12202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) shall be disregarded, i.e., that amount of social security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) such individuals would be eligible for federal supplemental security income benefits; eligibility as a result of such disregard shall not exist prior to July 1, 1986. To be eligible, applicants must apply within fifteen (15) months of the date of the Act, i.e., by July 1, 1987.

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. Effective for determinations of eligibility made on or after December 1, 1987, children under age twenty-one (21) living with parents (but not including children age eighteen (18) and above who are blind or disabled) are considered dependent minor children for purposes of deeming of income and resources under the Medicaid Program even if such children are emancipated under state law. Stepparents are responsible for their stepchildren as shown in this section 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, but not 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. Effective July 1, 1987, a husband and wife sharing a room or comparable accommodation in a long term care facility may be considered to be "living with" each other after they have continuously shared such a room or accommodation for six (6) months, if treating such husband and wife as living apart would prevent either of them from receiving medical assistance.

(2) In cases of aged, blind, or disabled applicants or recipients living with their eligible 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 applicants or recipients living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below.

(a) Determine the potential spend-down amount of the eligible individual by comparing the countable income to the Medically Needy Income Level (MNIL) for one (1) as shown in Section 3 of this regulation.

(b) Allocate to other dependents in the household from the ineligible spouse income in an amount equal to one-half (1/2) of the MNIL for a family size of one (1) for each dependent.

(c) If the ineligible spouse's income is more than one-half (1/2) of the MNIL for a family size of one (1), combine the income of the ineligible spouse with that of the eligible individual and compare that figure with the MNIL for a couple to determine the spend-down amount.

(d) Compare the amount resulting from paragraph (a) of this subsection with the result of paragraph (c) of this subsection and determine eligibility using the spend-down amount, if any, which is greater.

(e) Resources shall be considered in the same manner as for an eligible spouse.

(4) 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 for the six (6) months following that month unless such would act to preclude eligibility of the individual in long-term care.

(5) 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.

(6) 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.

(7) 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 nonspouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(8) 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.

(9) Income and resources of parent(s) are not considered available to a child living apart from the parent(s), 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).

(10) When a recipient (but not including a child) 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 with, effective with regard to determinations of eligibility made on or after February 1, 1988, the individual allowed forty (40) dollars as his/her basic maintenance standard. When a child in a family case is in the long term care facility, eligibility of the child is determined in the same manner for up to a year but his/her liability for the cost of care is determined by allowing to the child from his/her own income forty (40) dollars and considering the remainder available for the cost of care. (Note: in this situation any welfare payment made to the child is disregarded when determining liability for cost of care.) 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 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.

(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 part time (with full-time and part-time employment as defined in Section 4(1) of this regulation).

(b) 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) 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) Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(e) Income of a stepparent or grandparent receiving supplemental security income.

(f) 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 eligibility 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.

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. Notwithstanding the preceding, if the assessed agricultural value is used for tax purposes the transfer must be for an amount equal to the 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 nonhomestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for nonhomestead 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. Medical assistance eligibility 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) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

(2) AIS/MR services program participants who participate in the AIS/MR program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard). Income protected for basic maintenance of the AIS/MR participant in the posteligibility determination of patient liability for individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income program in addition to the SSI general exclusion.

(3) When eligibility is determined using community deeming rules, the attributed cost of care against which monthly available income of the AIS/MR participant shall be applied shall be the projected annual average cost of care for all participants divided by twelve (12) and rounded to the nearest dollar. The amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.

(4) Eligibility shall continue on the same basis as for an institutionalized individual when the cost of care is greater than the recipient's adjusted monthly income or the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

Section 16. Special Provisions for Hospice Recipients. Medical assistance eligibility for participants under the Medicaid hospice benefit shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of the hospice participant in the posteligibility determination of patient liability for noninstitutionalized individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income (SSI) program in addition to the SSI general exclusion. For the noninstitutionalized medically needy participants (all of whom must spend-down on a quarterly basis), the amount protected for basic maintenance is the usual medically needy standard as shown in Section 3 of this regulation plus the SSI general exclusion. For the institutionalized medically needy the amount protected for basic maintenance in the eligibility determination is the medically needy standard for the appropriate family size plus the SSI general exclusion. If a hospice participant is institutionalized in a long-term care facility, the basic maintenance amount is forty (40) dollars per month.

(2) When eligibility is determined for an institutionalized monthly spend-down case, the attributed cost of care against which monthly available income of the hospice participant shall be applied shall be the hospice routine home care per diem (for the hospice providing care) as established by the Medicare program plus the room and board rate for the appropriate level of care (i.e., skilled nursing or intermediate care).

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual when the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

(4) A hospice participant may be eligible for benefits based on this section only if he/she has elected coverage under the Medicaid hospice benefit rather than the regular Medicaid program.

(5) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 17. Special Provisions for Recipients Participating in the Home and Community Based Services Waiver Program. Medical assistance eligibility for participants under the home and community based (HCB) services waiver program shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of HCB services program participants who are eligible under the special income level shown in this section shall be the standard used for an individual in the federal supplemental security income (SSI) program in addition to the SSI general exclusion.

(2) HCB services program participants who participate in the HCB program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard).

(3) If an HCB services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of HCB services projected if eligibility is determined on a monthly basis, except that the amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.

(4) Usual institutional deeming rules shall be applicable with regard to all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 18. Treatment of Potential Payments

from Medicaid Qualifying Trusts. When an individual (or his/her spouse for the individual's benefit) creates (other than by will) a trust (or similar legal device) with amounts payable to the same individual, such trust shall be considered a "Medicaid qualifying trust" if the trustee(s) of the trust are permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual. In this circumstance the amount considered available to the trust beneficiary shall be the maximum amount the trustee(s) may (using the trustee's discretion) pay in accordance with the terms of the trust, regardless of the amount actually paid. The cabinet may, however, consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual; the criteria for determining "undue hardship" shall be established by the cabinet.

Section 19. Implementation. The amendments to this regulation will be effective with regard to determinations of eligibility made on or after July [April] 1, 1988 except as otherwise specified herein.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: June 30, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, phone: 502-564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Approximately 505 Medicaid recipients.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $58,000 in additional Medicaid benefits paid out.
2. Continuing costs or savings: $58,000 in additional Medicaid benefits paid out.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: State revenues to the agency will need to be increased as a result of the expenditure increase.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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. This regulation does not deal with regulated business entitites, and tiering is inappropriate for Medicaid recipients.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:008. Outpatient surgical clinics.

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 coverage provisions and method for establishing payment for outpatient surgical clinics.

Section 1. Scope of Coverage. The cabinet shall cover medically necessary services rendered by participating licensed outpatient surgical clinics.

Section 2. Basis for Payment. Freestanding

outpatient surgical clinics shall be reimbursed on the basis of sixty-five (65) [100] percent of their usual and customary [reasonable] charge for the procedure performed. [After the first full year of participation by the facility in the program, the facility schedule of charges shall be appropriately indexed for inflation, and the payment shall be the lesser of the actual reasonable charge or the indexed charge.] Hospital based outpatient surgical clinics shall be reimbursed in the same manner as hospital outpatient services as specified in 907 KAR 1:015.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: June 30, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, phone: 502-564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All Medicaid participating outpatient surgical clinics.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $1.2 million in savings from reduced payments to providers.
2. Continuing costs or savings: $1.6 million in savings from reduced payments to providers.
3. Additional factors increasing or decreasing costs: None; the difference is due to first year phase-in.
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Less state funds will be required since expenditures are reduced.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No other viable alternatives for cost reduction were identified.
(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. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:013. Payments for hospital inpatient services.

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

Section 1. Acute Care Hospital, Rehabilitation 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 July [April] 1,

1988, 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 reestablished 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) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor is applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) 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 such a manner as 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. Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature will not be peer grouped or arrayed.

(6) Use of a minimum occupancy factor. A minimum occupancy factor will be applied to capital costs attributable to the Medicaid program. A sixty (60) percent occupancy factor will apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor will apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of 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.

(8) 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 115 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). Such major public pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy, and, effective with regard to payments for services on or after July 1, 1988, such major private pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to one and one-half (1 1/2) percent of the base for each one (1) percent of Medicaid occupancy.

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

(10) Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(11) 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 inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges. [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.

Section 6. The amendments shown herein shall be effective with regard to payments for services rendered July [April] 1, 1988, and thereafter.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: June 30, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, phone: 502-564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: One in-state hospital and all out-of-state participating hospitals.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $2.5 million savings from reduced payments to providers.
2. Continuing costs or savings: $2.8 million savings from reduced payments to providers.
3. Additional factors increasing or decreasing costs: None; the difference in savings is due to first year phase-in.
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Less state revenues will be needed since expenditures are being reduced.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives for cost control were identified.
(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. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This

regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:015. Payments for hospital outpatient services.

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

Section 1. Outpatient Hospital Services. In accordance with the provisions of 42 CFR 447.321, the cabinet shall reimburse participating hospitals for outpatient services at the rate of sixty-five (65) [seventy (70)] percent of usual and customary charges billed to the Medical Assistance Program. There is no settlement to the lower of cost or charges, nor may charges or costs be transferred between the inpatient and outpatient service units.

Section 2. The payment provisions shown in Section 1 of this regulation shall be effective for services provided on or after July 1, 1988 [August 3, 1985].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: June 30, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, phone: 502-564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating hospital outpatient facilities.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $2.5 million savings from reduced payments to providers.
2. Continuing costs or savings: $3.6 million savings from reduced payments to providers.
3. Additional factors increasing or decreasing costs: None; difference is due to first year phase-in.
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Less state revenues will be required as expenditures are reduced.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives for cost control were identified.
(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. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:020. Payment for drugs.

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

Section 1. Maximum Allowable Cost Reimbursement Limits. (1) Reimbursement to pharmacists participating in the Medical Assistance Program for those drugs contained on the Kentucky Medical Assistance Program Outpatient Drug List and provided to eligible recipients is limited to the lowest of:

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

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

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

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

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

(b) For drugs not on the drug list, the maximum reimbursement shall be the same as set forth in subsection (1)(a) through (c) of this section. EAC's shall be determined in the same manner as for drugs included on the outpatient drug list. SNF/ICF facilities shall not impose an additional charge on medicaid eligible recipients for drugs because of the limitations set forth in Section 1(2) of this regulation;

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

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

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

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

(3) Reimbursement to hospitals for drugs provided to eligible recipients is on the basis of reasonable cost pursuant to 907 KAR 1:013.

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

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

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

Section 5. Implementation. The provisions of this regulation as amended shall be effective with regard to services provided on or after July 1, 1988 [October 1, 1985].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: June 30, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this

administrative regulation shall be held on August 22, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, phone: 502-564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All Medicaid participating pharmacists.
(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: $0.4 million savings from reduced payments to providers.
2. Continuing costs or savings: $0.5 million savings from reduced payments to providers.
3. Additional factors increasing or decreasing costs: None; the difference is due to first year phase-in.
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Less state revenues will be required since expenditures are being reduced.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This action is required as a result of a change to federal regulations.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(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. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:028. Other laboratory and x-ray services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to other laboratory and x-ray services for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and medically needy.

Section 1. Covered Services. Laboratory services provided by a participating independent laboratory shall be limited to <u>those</u> [the following] procedures <u>for which the laboratory is certified under Medicare</u> when prescribed by a physician or dentist<u>.</u> [:]
[(1) Bilirubin;]
[(2) Bleeding time;]
[(3) Blood culture (definitive);]
[(4) Red blood count;]
[(5) White blood count;]
[(6) Differential;]
[(7) Complete blood count;]
[(8) Cholesterol;]
[(9) Clotting time;]
[(10) Hemoglobin;]
[(11) Hematocrit;]
[(12) Acid phosphatase;]
[(13) Alkaline phosphatase;]
[(14) Potassium;]
[(15) Prothrombin time;]
[(16) RA test (latex agglutinations);]
[(17) Stool (occult blood);]
[(18) Sedimentation rate;]
[(19) Sodium;]
[(20) Glucose (blood);]
[(21) Blood typing;]
[(22) Blood urea nitrogen;]
[(23) Uric acid;]
[(24) SGOT or SGPT (serum transaminase);]
[(25) Stool (ova and parasites);]
[(26) Pap smear;]
[(27) Urine analysis;]
[(28) Pregnancy test;]
[(29) Smears for bacteria, stained;]

[(30) Cultures (throat, urine, etc.);]
[(31) Package of the following twelve (12) tests when performed on automatic laboratory analyzing machine: cholesterol, calcium, phosphorus, total serum bilirubin, albumin, total protein, uric acid, blood urea nitrogen, glucose, lactic dehydragenase, alkaline phosphatase, and serum transaminase;]
[(32) Dilantin level;]
[(33) Electrolytes;]
[(34) Glucose tolerance (two (2) hour);]
[(35) Glucose tolerance (four (4) hour);]
[(36) Glucose tolerance (six (6) hour);]
[(37) Master chem twenty-four (24);]
[(38) Thyroid profile;]
[(39) Arthritis profile;]
[(40) CPK (creatine phosphokinase);]
[(41) VDRL (venereal disease rule out);]
[(42) Drug abuse screen;]
[(43) Phenobarbital;]
[(44) Any three (3) through six (6) automated tests;]
[(45) Any seven (7) through twelve (12) automated tests;]
[(46) Any thirteen (13) through sixteen (16) automated tests;]
[(47) Any seventeen (17) through eighteen (18) automated tests;]
[(48) Any nineteen (19) or more automated tests;]
[(49) Platelet count;]
[(50) Urine culture;]
[(51) Sensitivity testing;]
[(52) T3;]
[(53) T4;]
[(54) Rubella;]
[(55) Therapeutic drug monitoring;]
[(56) Lithium;]
[(57) Theophylline;]
[(58) Digoxin; and]
[(59) Digitoxin.]

Section 2. The amendments to Section 1 of this regulation shall be effective with regard to services provided on or after July 1, 1988 [January 1, 1987].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: June 30, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, phone: 502-564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All Medicaid participating independent laboratories.
(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: Taken in conjunction with 907 KAR 1:029, there is no cost impact.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is a program improvement which permits the agency to equalize the provision of laboratory services while meeting federal requirements with regard to payments for such services.
(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. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:029. Payments for laboratory 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 of determining amounts payable by the cabinet for laboratory services.

Section 1. Laboratory Services. [In accordance with 42 CFR section 447.325,] The cabinet shall reimburse participating independent laboratories, outpatient surgical clinics, renal dialysis centers, and outpatient hospital clinics for covered services rendered on the basis of the allowable payment rates set by Medicare. [following:]

[(1) Reimbursement shall be made on the basis of an established fee schedule.]

[(2) The fee schedule shall not exceed customary fees which are reasonable and within the prevailing charges in the medical service locality for comparable services under comparable circumstances.]

Section 2. The amendments to Section 1 of this regulation shall be effective with regard to services provided on or after July 1, 1988.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: June 30, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, phone: 502-564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All Medicaid participating independent laboratories, outpatient surgical clinics, renal dialysis centers, and hospital outpatient units providing laboratory services.
(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: This is a program improvement designed to equalize the provision of laboratory services among qualified providers and comply with federal requirements with regard to payments for such services.
(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. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:031. Payments for home health 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 home health agency services.

Section 1. Payments to Home Health Agencies. The cabinet shall reimburse participating home health agencies on the basis of interim rates set by the cabinet using available Medicare data and methodology as applied to Medicaid covered services, taking into consideration the upper limit shown in Section 2 of this regulation and the various policies and guidelines specified in the Home Health Reimbursement Manual, dated July 1, 1988, which is hereby incorporated by reference. Payments made at the interim rate will be settled back to actual allowable cost at the end of the facilities' fiscal year, with actual allowable costs not to exceed the amounts that would be allowable taking into consideration the upper limit specified in Section 2 of this regulation. The Medicaid final rates may not exceed federally established upper limits for Medicare.

Section 2. Application of Upper Limits. Publicly operated home health agencies and new facilities with less than two (2) full facility fiscal years of operations will be reimbursed at full allowable cost but are subject to the Medicare upper limits. Payments for other agencies (except payments for durable medical equipment, as shown in Section 3 of this regulation, and payments for disposable medical supplies, as shown in Section 4 of this regulation) may not exceed a prospective upper limit which will be set at 105 percent of the weighted median of the array of allowable per visit costs of those agencies that will be subject to the upper limits with facilities placed in an urban or rural array based on the facility location for the following cost centers or disciplines: skilled nursing, speech pathology, physical therapy, occupational therapy, medical social services, and home health aid services. A determination as to whether a county is urban or rural will be made taking into account usual standard metropolitan statistical areas. The arrays shall be based on annual cost report data with costs trended through June 30 and indexed for the rate year; the rate year shall begin on July 1 and end on June 30; and the upper limit shall be subject to an annual adjustment to be effective on July 1 of each rate year. Aggregation of costs (i.e., shifting of allowable costs from one cost center to another if the limit is exceeded in one cost center but not in another) will be permitted. For rate years beginning July 1, 1986 and thereafter, the array shall be based on the latest available cost report as of May 31 preceding the rate year. [New facilities which are subject to the cost center upper limit will, until the completion of two (2) full years of operation, be subject only to the Medicare upper limits.]

Section 3. Payments for Durable Medical Equipment. The interim payment amount for durable medical equipment shall be determined taking into account Medicaid upper limits on cost for such durable medical equipment, and may include an amount for administrative cost not to exceed twenty (20) percent of the interim payment amount set for the item(s) of durable medical equipment. All participating home health agencies may receive full allowable costs for durable medical equipment, with allowable costs determined taking into account appropriate upper limits.

Section 4. Disposal medical supplies shall be reimbursed on an interim basis at a percent of allowable billed charges with a settlement to actual costs at the end of the agency's fiscal year.

Section 5. New home health agencies shall be paid an interim budgeted rate basis, with interim payments not to exceed Medicare upper limits, until a fiscal year end cost report is available, with payments settled back to full allowable costs.

Section 6. Owners' compensation shall be limited as shown in the Home Health Reimbursement Manual.

Section 7. [4.] Appeals. Participating home health agencies are provided the following mechanism for a review of program decisions relating to the application of the policies and procedures governing home health agency payments.

(1) A home health agency operator may request reconsideration of a program decision by writing to the Director, Division of Reimbursement and Contracts. This request must be received within forty-five (45) days following transmittal of the audited cost report to the agency or the notification of the agency's prospective rate. The request for workpapers pertaining to audit adjustments to the home health agency's cost report will not extend the forty-five (45) day time limit. The request for appeal must indicate which adjustments the home health agency wishes to appeal. A blanket request to appeal the cost report will not be accepted. Upon receipt of the request for review, the division will determine the need for a program/vendor conference and will contact the home health agency to arrange a conference if needed. The conference, if needed, must be held within sixty (60) days of the program's receipt of the home health agency's request for review unless delayed due to extenuating circumstances. Regardless of the program decision, the provider will be afforded the opportunity for a conference if he so wishes for a full explanation of the factors involved and the program decision. Following review of the matter, the director will notify the home health agency of the action to be taken by the division within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) If the Director of Reimbursement and Contracts' decision is unsatisfactory, the home health agency may then appeal the question to a reimbursement review panel established by the Commissioner of the Department for Medicaid Services which will include one (1) member of the Division of Reimbursement and Contracts, a representative of the Kentucky Association of

Home Health Agencies, and a member of the Department for Medicaid Services (but not within the Division of Reimbursement and Contracts) as designated by the commissioner, with such designated member to serve as chairperson. The request for review by the reimbursement review panel must be postmarked within twenty (20) days following the notification of the initial decision by the Director, Division of Reimbursement and Contracts. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of a written request for such appeal. The question will be heard by the panel. 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.

Section 8. Audits may be performed by either the Medicare or Medicaid program; if audited by both, the Medicaid audit will take precedence over the Medicare audit.

Section 9. [5.] The amendments to this regulation shall be effective with regard to services provided on or after July 1, 1988 [1987].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: June 30, 1988 at 3 p.m.
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Potentially all Medicaid participating home health agencies; about seven are directly affected by owners' compensation limits.
(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: $75,000 in savings from reduced payments to providers.
2. Continuing costs or savings: $75,000 in savings from reduced payments to providers.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Less state revenues will be needed due to reduced expenditures.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No more appropriate method of program improvement was identified.
(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. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

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

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the

provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for skilled nursing care facility services and intermediate care facility services.

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

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

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, revised July [May] 1, 1988) and supplemented by the use of the Title XVIII-A reimbursement principles.

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

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

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1 - June 30) by taking the latest audited cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. (Unaudited, partial year, and/or budgeted cost data may be used if a full year's audited data is unavailable. Unaudited reports are subject to adjustment to the audited amount, and will be used when an audited cost report ending within twenty-four (24) months of the 30th of April preceding the rate year is not available. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) After allowable costs are indexed for inflation for the rate year, freestanding (nonhospital based) facilities will be arrayed and the maximum set at 102 percent of the median for the class (SNF or ICF). Publicly operated skilled nursing and intermediate care facilities classified as institutions for mental diseases will not be subject to the administratively set upper limit and component limitations, although such facilities will be included in the arrays for purposes of establishing the applicable upper limits. In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 105 [135] percent of 102 percent of the median of allowable trended and indexed costs of all other SNFs, however, such upper limit shall not exceed 102 percent of the median of the array of allowable trended and indexed costs of hospital based 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, there is no administratively established upper limit. Effective January 1, 1987, and continuing through the rate years beginning July 1, 1987, and July 1, 1988, the allowable cost for each facility shall include a patient care labor intensity factor of two and six-tenths (2.6) percent applied to that portion of the facilities' operating costs attributable (based on averages for the class of facility) to labor costs. This allowance is generally intended for the purpose of direct service staff improvements to enhance patient care. [Effective with the rate year beginning on July 1, 1987, that portion of the facilities' operating costs attributable (based on averages for the class of facility) to labor costs shall be indexed for the rate year by a labor cost intensity factor based on the state employee annual salary increment; this indexing shall be in lieu of the usual indexing for inflation of such labor costs, however, the labor cost intensity factor shall be not less than the usual indexing factor

and, if necessary, shall be increased to an amount equal to the usual indexing factor. This adjustment is designed to allow for salary and staffing improvements to improve patient care.]

(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 except for ventilator therapy services which shall be paid on a prospective rate basis. 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 nonlegend 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). Compensation for owners and nonowner administrators may not exceed the amounts specified in the IC-SNF Reimbursement Manual.

(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 five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship will be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

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

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

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (and classified as newly participating facilities for purposes of this subsection), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for capital 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 multilevel 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; however, as an exception to the conditions specified in this subsection a facility will not be considered as newly participating if it increases its certified bed capacity by no more than a cumulative total of thirty-five (35) beds (on or after April 1, 1981) so long as its new total certified bed capacity does not exceed sixty-five (65) beds. Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.

(c) For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the class) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted by trending, indexing and the occupancy factor. The median for each cost center for each class shall be determined annually using the same cost data for the class which was used in setting the maximum payment amount. The Department for Medicaid Services 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), specified vehicle costs as shown in the Reimbursement Manual, 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 unless such costs are incurred by administrators or owners.

(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. 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 herein for the reevaluation of assets of skilled nursing and intermediate care facilities.

(a) No increase will be allowed in capital costs.

(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.

(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 on-site 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 review each year-end cost report to determine the necessity for and scope of an audit in relation to routine and ancillary service cost. If an audit is not performed, the report will be settled without audit. If an audit is indicated, it will be either a limited-scope audit or a full field audit. An audit may be conducted for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An 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).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(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 nonavailability 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) When a recipient in a SNF changes patient status (from SNF to ICF) on or after February 1, 1986 and is admitted to an ICF within the permitted transfer period for the recipient (i.e., while the recipient still qualifies for coverage at the skilled rate), the 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.]

(19) [(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.

[(23) SNF's which on February 1, 1986 continued to care for recipients who were classified as meeting SNF patient status criteria as of August 31, 1985 only because of nonavailability of an ICF bed, where the recipient is on the waiting list of an ICF, may receive the usual SNF rate for those recipients subject to the following transitional reimbursement standards and criteria:]

[(a) The facility must file a letter of intent with the Cabinet for Human Resources, Office of the Secretary, 275 East Main Street, Fourth Floor, Frankfort, Kentucky 40621 by January 31, 1986 (receipt in the cabinet is required) for downward conversion of the bed(s) in which the recipient(s) is residing.]

[(b) Any facility which files a letter of intent must submit to the Commission for Health Economics Control in Kentucky (CHECK) an appropriate certificate of need application for downward conversion of the skilled bed(s), no later than February 14, 1986, in order for the transitional reimbursement payments to continue.]

[(c) Payment under this transitional reimbursement provision shall continue only until such time as the Commission for Health Economics Control in Kentucky (CHECK) has acted on the application and any appropriate licensure action has been effected.]

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

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

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

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

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

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

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

(Effective 7-1-88 [7-1-87])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$32.99 & below [31.99 & below]	$.92	$.58
33.00 - 33.99 [32.00 - 32.99]	$.86	$.50
34.00 - 34.99 [33.00 - 33.99]	$.78	$.41
35.00 - 35.99 [34.00 - 34.99]	$.70	$.32
36.00 - 36.99 [35.00 - 35.99]	$.61	$.21
37.00 - 37.99 [36.00 - 36.99]	$.51	$.09
38.00 - 38.61 [37.00 - 37.87]	$.35	-

Maximum Payment $38.61 [37.87]

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

(Effective 7-1-87)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$86.99 & below	$1.38	$.87
87.00 - 92.99	$1.29	$.75
93.00 - 98.99	$1.18	$.62
99.00 -104.99	$1.06	$.47
105.00 -110.99	$ .92	$.31
111.00 -116.99	$ .76	$.13
117.00 -123.49	$ .53	-

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

(Effective 7-1-88 [7-1-87])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$43.99 & below [41.99 & below]	$.92	$.58
44.00 - 45.99 [42.00 - 43.99]	.86	.50
46.00 - 47.99 [44.00 - 45.99]	.78	.41
48.00 - 49.99 [46.00 - 47.99]	.70	.32
50.00 - 51.99 [48.00 - 49.99]	.61	.21
52.00 - 53.99 [50.00 - 51.99]	.51	.09
54.00 - 56.07 [52.00 - 54.00]	.35	-

Maximum Payment $56.07 [54.00]*

*The maximum payment for hospital based skilled nursing facilities is set at $58.87 [72.90].

(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 Reimbursement and Contracts, a reevaluation 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 Medicaid Services, a review by a standing review panel to be established by the commissioner. This request must be postmarked within twenty (20) days following notification of the decision of the Director, Division of Reimbursement and Contracts. Such panel shall consist of three (3) members: one (1) member from the Division of Reimbursement and Contracts, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement and Contracts) as designated by the Commissioner, Department for Medicaid Services, with such designated member to act as chairperson of the review panel. 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 except for ventilator therapy services 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 nonlegend drugs, including indwelling 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).

(g) Ventilator therapy services, subject to the coverage limitations shown in the Reimbursement Manual.

(h) Disposable and reusable incontinent briefs, reusable briefs with disposable liners, and disposable or reusable underpads when ordered by a physician.

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

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

(5) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs. The inflation factor shall be included for rates computed on August 3, 1985 and thereafter.

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

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

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

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

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

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

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

(a) All general nursing services, including administration of oxygen and related

medications, handfeeding, incontinency care and tray services.

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

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

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

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

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

(13) For disposable briefs, reusable briefs, reusable briefs with disposable liners, and disposable or reusable underpads provided upon a physician's orders, the per unit product cost in excess of twenty (20) cents, but not in excess of forty (40) cents, shall be considered ancillary cost, with other cost for such products (including all laundry cost) to be considered routine cost. The first six (6) dollars and fifty (50) cents of cost per catheter for indwelling urethral catheters (excluding specialty purpose catheters) shall be considered as allowable ancillary cost with any balance of cost to be considered as allowable routine cost. Indwelling urethral special purpose catheters will be reimbursable as an ancillary at full allowable cost when ordered by a physician. [The first twenty (20) cents of cost of each disposable incontinent brief shall be considered to be ancillary costs when such briefs are provided upon a physician's orders, with the balance of the cost of such briefs considered to be routine costs.]

Section 7. Implementation Date. The amendments to this regulation shall be effective on July [May] 1, 1988.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: June 30, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, phone: 502-564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: Potentially all Medicaid participating skilled nursing and intermediate care facilities.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $0.8 million savings from reduced payments to providers.

2. Continuing costs or savings: $0.9 million savings from reduced payments to providers.

3. Additional factors increasing or decreasing costs: None; the difference is due to first year phase-in.

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Less state revenues will be needed since expenditures are being reduced.

(4) Assessment of alternative methods; reasons why alternatives were rejected: More viable alternative method of cost control were not identified.

(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. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation does not set compliance standards.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.

3. If the proposed regulation imposes

additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:042. Amounts payable for hospital furnished skilled nursing and intermediate care facility services.

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

Section 1. Reimbursement for Hospital Furnished Skilled Nursing and Intermediate Care Services. To qualify for reimbursement, any hospital(s) providing skilled nursing facility services and intermediate care facility services must have in effect an agreement with the secretary, Department of Health and Human Services, pursuant to Section 1883 of the Social Security Act, or be dual licensed (as provided for in KRS Chapter 216B) to provide skilled nursing and/or intermediate care services in an acute care hospital bed. Such hospital(s) shall be paid for swing-bed services provided pursuant to Section 1883 of the Act at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the state's Title XIX plan to skilled nursing and intermediate care facilities, respectively, located in the state in which the hospital is located; for dual licensed skilled nursing or intermediate care services, such hospital shall be paid at a rate equal to the hospital based skilled nursing facility upper limit or intermediate care facility upper limit, as appropriate for the level of care provided, in effect at the time the service is provided. The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services; covered ancillary services shall be the same as for all other skilled nursing and intermediate care facilities.

Section 2. Rate Review and Adjustment. Any participating facility may appeal its established rates using either the customary appeals mechanism for providers of hospital inpatient services or for providers of skilled nursing and intermediate care facility services.

Section 3. Eligibility for Reimbursement. A facility shall be eligible for reimbursement only when considered to be a participating vendor, and reimbursement shall be made only for covered services rendered eligible Title XIX recipients meeting patient status as determined in accordance with applicable regulations.

Section 4. The amendments to this regulation shall be effective with regard to services provided on or after July 1, 1987.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: June 30, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, phone: 502-564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Approximately 7 hospitals providing dual licensed skilled nursing and intermediate care facility services.
(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: $20,000 savings from reduced payments to providers.
2. Continuing costs or savings: $20,000 savings from reduced payments to providers.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Less state revenues will be required due to decreased expenditures.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No suitable alternatives were identified.
(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. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:170. Payments for home and community based 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 methods of payment for home and community based services provided as an alternative to skilled nursing facility and intermediate care facility care.

Section 1. Coverage. The Cabinet for Human Resources shall reimburse participating providers (including coordinating agencies) of home and community based (HCB) services for services rendered to eligible medical assistance recipients who meet patient status criteria for skilled nursing or intermediate care facility care, and who are prior authorized for the HCB service. Coverage provisions are contained in 907 KAR 1:160.

Section 2. Payments. Payment amounts for HCB services shall be determined in accordance with the provisions and principles contained herein.
(1) Assessment, case management, homemaker services, personal care services, respiratory therapy shall be paid using an interim payment method with a year-end settlement to the lower of actual reasonable costs or reasonable charges utilizing Medicare principles of reimbursement. In addition, these services, except for case management and respiratory therapy, shall be subject to a prospectively set upper limit with such upper limit set at 130 percent of the weighted median of the array of services using the most recent cost report available as of May 31 with upper limits updated each July 1; this limit shall not apply until such time as a provider has participated in the program for two (2) full facility fiscal years. The interim rate is derived by applying a reduction factor to current charges based on the difference between prior year allowable cost and charges. When prior year costs and charges are not available, the interim rate will be set at the cabinet's best estimate of current costs (not to exceed charges) based on payments made for similar services.
(2) Respite care shall be paid on the basis of billed charges, with reimbursement for an individual (beginning with the first billed HCB service) not to exceed $2,000 per calendar year or $1,000 in any six (6) month period within that calendar year. The billed charge should include only the actual cost of the respite care services plus actual overhead costs incurred by the provider. There will be a [no] year-end settlement to actual cost, or charges if lower, not to exceed the upper limits.
(3) Minor home adaptations shall be paid on the basis of actual billed charges, with reimbursement for an individual for a calendar year limited to a maximum of $500 for all modifications. The service must have been appropriately prior authorized and have been provided. The billed charge should include only the actual cost of the minor home adaptations plus actual overhead costs incurred by the provider. There will be a [no] year-end settlement to actual costs, or charges if lower, not to exceed the upper limit.
(4) Payments for adult day health care services shall be made directly to licensed participation adult day health care centers on the basis of an interim rate with a year-end cost settlement to the lower of actual reasonable allowable costs or charges. The basic rate shall not exceed eighty (80) percent of the maximum intermediate care reimbursement rate for routine services. Reimbursement for ancillary services shall not exceed eighty (80) percent of the approved maximum reimbursement rate for therapy services under the home health program element.

Section 3. Audits shall be performed as necessary to ensure that final payments are in accordance with the payment provisions contained in this regulation.

Section 4. [3.] Implementation. The amendments to this regulation shall be effective with regard to services provided on or after July 1, 1988 [January 1, 1987].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: June 30, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17,

1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, phone: 502-564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: An estimated 14 home and community based services providers (home health agencies).

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $0.2 million in savings due to reduced payments to providers.

2. Continuing costs or savings: $0.2 million in savings due to reduced payments to providers.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Less state revenues will be required due to reduced expenditures.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable cost control measures were identified.

(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. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation does not set compliance standards.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: No additional standards, requirements or responsibilities are imposed.

PROPOSED REGULATIONS RECEIVED THROUGH JULY 15

REVENUE CABINET
Department of Professional & Support Services

103 KAR 16:145. Apportionment and allocation; barge line companies.

RELATES TO: KRS 141.120
PURSUANT TO: KRS Chapter 13A
NECESSITY AND FUNCTION: This regulation, under authority of KRS 141.120(10)(b), specifies how the factors for apportioning the income of interstate barge lines are to be determined.

Section 1. General. (1) For taxable years beginning before August 1, 1985, business income of a multistate corporate barge line shall be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the sales factor plus the property factor plus the payroll factor, and the denominator of which is three (3). For taxable years beginning after July 31, 1985, business income of a multistate corporate barge line shall be apportioned to Kentucky by multiplying the income by a weighted fraction, the numerator of which is the weighted sales factor (fifty (50) percent) plus the weighted property factor (twenty-five (25) percent) plus the weighted payroll factor (twenty-five (25) percent), and the denominator of which is four (4).

(2) Nonbusiness income shall be allocated to Kentucky pursuant to KRS 141.120(4) through (7) and 103 KAR 16:060.

Section 2. Sales Factor. Sales means all gross receipts of the taxpayer not allocated as nonbusiness income. The sales factor is a fraction, the numerator of which is operating income assigned to Kentucky plus receipts assigned to Kentucky under 103 KAR 16:070 and the denominator of which is total operating income plus total receipts assigned under 103 KAR 16:070. Operating income is assigned to Kentucky as follows: total operating income shall be multiplied by a fraction, the numerator of which is the miles operated in Kentucky and the denominator of which is total miles operated. Miles operated in Kentucky shall be (fifty (50) percent) of the miles operated on the Ohio River, the Big Sandy River and Mississippi River adjacent to Kentucky shoreline plus all miles operated on other inland waterways within Kentucky. "Mile operated" means each barge, tug or other watercraft moved one (1) mile.

Section 3. Property Factor. The property factor is a fraction, the numerator of which is the average value of real or tangible property situsued in Kentucky that is owned and used and/or leased and used. The denominator is the average value of all real or tangible situsued property that is owned and used and/or leased and used everywhere. The average value of tangible situsued property shall be determined under the provisions of 103 KAR 16:080. The value of watercraft and other floating property shall be excluded from the property factor.

Section 4. Payroll Factor. The payroll factor shall be determined under the provisions of KRS 141.120(8)(b) and 103 KAR 16:090.

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: July 5, 1988
FILED WITH LRC: July 11, 1988 at 2 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on August 22, 1988 at 11 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. If no written notice of intent to attend the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending shall notify in writing: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers
(1) Type and number of entities affected: This proposed corporation income tax apportionment and allocation regulation affects multistate taxpayers engaged in the interstate operation of barge lines. The regulation is required by KRS 141.120(10) to prescribe the property and sales factors for this group of taxpayers (the payroll factor is prescribed by statute). The promulgation of this regulation completes the public service and financial section regulations required by law.
(a) Direct and indirect costs or savings to those affected:
1. First year: Data required for implementation of this proposed regulation is available and is currently used by the industry to determine apportionment factors.
2. Continuing costs or savings: Routine recurring costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: Apportionment factor change causes a nominal decrease in state revenue. Local revenue is not affected.
(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 141.120(4) requires property and sales factors to be prescribed by regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes.

ECONOMIC DEVELOPMENT CABINET
Department of Business Development

306 KAR 2:010. Economic development bond project reporting requirements.

RELATES TO: KRS Chapter 152
PURSUANT TO: KRS Chapters 13A, 152
NECESSITY AND FUNCTION: KRS Chapter 152 provides that all economic development bond projects shall be presented to the General Assembly Capital Projects and Bond Oversight Committee (hereinafter "committee") for review and recommendation prior to the issuance of bonds. This regulation establishes requirements for the reporting of information to the committee by the Economic Development Cabinet (hereinafter "cabinet").

Section 1. Definitions of terms or phrases used in this regulation relating to the issuance of economic development bonds are the same as those stated in applicable sections of KRS Chapter 152.

Section 2. The cabinet shall submit the following information to the committee prior to its consideration of economic development bond projects:
(1) A copy of the written commitment from the public or private organization which has requested state bonds and a copy of the final proposed written agreement between the cabinet and the public or private organization requesting state bonds;
(2) The project estimated job creation and job retention;
(3) The estimated percentage of public and private local involvement;
(4) The projects estimated payback and contribution in retiring the associated debt obligation;
(5) The amount of the proposed funding;
(6) The terms of repayment including the interest rate, term, and schedule of payments;
(7) An explanation of the funding terms;
(8) The degree to which the project would compete with similar businesses within the area;
(9) A list of the principal owners, partners, and stockholders that own twenty (20) percent or more of the business, and of the officers and directors of the project to be funded.

Section 3. A written report shall biennially be submitted by the cabinet with the budget request that includes the amount of economic development bond fund proceeds still available, the amount of interest earned on unused proceeds, any refundings of economic development bonds, a list of loans, grants or other forms of assistance made and to whom, the original and remaining amount of each loan, the principal and interest repaid in that fiscal year and the disposition of these funds.

Section 4. The cabinet shall annually prepare and submit to the committee a written report which evaluates each economic development bond fund project which has been funded by said cabinet under the criteria stated in Section 2 of this regulation. This report shall evaluate in summary fashion the nature of the financing provided on each project and compliance of the organization that requested state bonds with the agreement it entered into with the cabinet. This report shall also delineate the amounts paid back from projects and the remaining balance outstanding.

WILLIAM H. LOMICKA, Secretary
APPROVED BY AGENCY: July 11, 1988
FILED WITH LRC: July 12, 1988 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 23, 1988, at 10 a.m. at the Conference Room of the Economic Development Cabinet, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.
This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.
If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation.
Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Denis B. Fleming, Jr., General Counsel, Economic Development Cabinet, 2400 Capital Plaza Tower, Frankfort, Kentucky 40601, (502) 564-7670.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Denis B. Fleming, Jr.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: This regulation affects no public entities. It promulgates reporting requirements for the Economic Development Cabinet ("cabinet") to a legislative oversight committee.
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: Cabinet personnel responsible for documenting economic development bond projects will be required to assemble and prepare data to be reported to the Capital Projects and Bond Oversight Committee.
(a) Direct and indirect costs or savings: No direct costs. Indirect costs will be those associated with copying reports, postage and related administrative costs.
1. First year: $100 (estimate).
2. Continuing costs or savings: Same each year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: This regulation sets out reporting requirements and entails the paperwork necessary to prepare annual and biennial reports and reports on each economic development bond project.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation began as a bill draft but is considered more feasible and proper as an administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes.

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

401 KAR 4:110. Definitions for 401 KAR 4:120 to 4:140.

RELATES TO: KRS 146.220, 146.240, 146.250, 146.260, 146.270, 146.290, 146.310, 146.350, 146.360
PURSUANT TO: KRS 146.270, 224.033, 224.045
NECESSITY AND FUNCTION: KRS 146.270 authorizes the secretary to adopt rules and regulations necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them. Emphasis shall be given to protecting aesthetic, scenic, ecological, historic, archaeological and scientific features of the areas. This regulation defines certain essential terms used in the wild rivers regulations, 401 KAR 4:120 to 4:140, which are not clearly defined by their context. Terms not defined below have the meaning given to them in relevant statutes or, if not defined in statutes, the meaning attributed by common use.

Section 1. (1) "Access road" means that access constructed or improved to connect a permitted use within a wild river corridor to a public road system.
(2) "Adverse impact" means having a damaging, degrading or destructive effect on a resource.
(3) "Agricultural use" means the use of land for agricultural purposes including, but not limited to farming, dairying, pasturage, apiaries, horticulture, floriculture, viticulture, and animal and poultry husbandry.
(4) "Applicant" means the landowner who applies for a change of use permit to allow a change of land use within a wild river corridor.
(5) "Best management practices" means methods, measures or practices to prevent or reduce water pollution, including, but not limited to, structural and nonstructural controls, and operation and maintenance procedures which may be applied before, during or after pollution-producing activities to reduce or eliminate the introduction of pollutants into waterbodies.
(6) "Buffer zone" means an area of natural vegetation having a minimum width of not less than 100 feet, which is retained along the banks of wild rivers and other significant features to maintain aesthetics, bank stability, appropriate water temperatures, fish and wildlife habitat, and stream hydraulics, and to filter debris and water-borne pollutants from surface runoff.
(7) "Cabinet" means the Natural Resources and Environmental Protection Cabinet.
(8) "Change of use permit" means a permit issued to a landowner by the secretary to authorize a change of land use within a wild river corridor.
(9) "Commercial service" means the use of a wild river corridor for monetary profit, including, but not limited to, concessions, boat rentals, shuttle services, guided trips or tours, commercial boat docks, wharves and other recreational facilities.
(10) "Conforming land use" means a land or resource use which conforms to the provisions and intent of the Kentucky Wild River Act and the management plan developed pursuant to KRS 146.270 for a given wild river corridor.
(11) "Cultural character" means the condition, composition, and/or appearance of an archaeological or historical feature which contributes to its outstanding, unique or otherwise significant value.
(12) "Disturbed area" means an area having a manmade surface disturbance.
(13) "Division" means the Division of Water.
(14) "Existing use" means a land use which is in existence at the time the boundaries of a wild river corridor are designated by the Kentucky General Assembly.
(15) "Floodplain" means the area in a watershed that is subject to flooding at least one (1) time in every 100 years.
(16) "Kentucky Wild Rivers Act" means KRS 146.200 to 146.360, as amended.
(17) "Landowner" means the owner of the surface rights of a property, or the owner of severed mineral rights or interest in the mineral rights in cases where a proposed change of use involves extraction of subterranean resources.
(18) "Land use plan" means a plan of action submitted to the cabinet as part of a change of use permit application.
(19) "Log landing" means a collecting point for holding cut timber.
(20) "Management agency" means the cabinet, or any local, state or federal agency or agencies or private organizations acting under cooperative agreement with the cabinet to administer and manage a given wild river corridor.
(21) "Management plan" means the individual plan adopted by the cabinet pursuant to KRS 146.270 as the official document guiding the management and protection of a given wild river corridor.
(22) "Natural character" means the condition or appearance of an area or resources which may be expected to exist in nature undisturbed by human actions.
(23) "Natural vegetation" means the species, or combinations of species, of plants which exist, or may be expected to exist, in nature undisturbed by human actions.
(24) "New land use" means a land use within a wild river corridor which is not in existence at the time the boundaries of a given corridor are designated by the Kentucky General Assembly.
(25) "Operator" means the person, partnership, contractor, subcontractor, company or corporation responsible for the construction, maintenance, operation and reclamation of a permitted use.
(26) "Permitted use" means a nonconforming land use within a wild river corridor which has been authorized by the secretary through the issuance of a change of use permit.

(27) "Permittee" means a landowner who has obtained a change of use permit from the cabinet.

(28) "Produced water" means water and pollutants and combination thereof resulting, obtained or produced from the exploration, drilling or production of oil or gas.

(29) "Professional forester" means a person holding a degree in forestry from a school with an accredited forestry program.

(30) "Research plan" means a plan of action submitted to the cabinet for approval prior to initiating a scientific study within a given wild river corridor.

(31) "Resource removal" means exploration for, extraction or removal of a natural resource including, but not limited to, coal, oil and gas, minerals, rock, gravel, sand and soil.

(32) "Secretary" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(33) "Selective cutting (of timber)" means the selective removal during one (1) entry of single trees from an area such that a specified minimum residual stocking level is retained and evenly distributed over the harvest area. The purpose of the cut is to create or maintain an uneven-aged stand of timber.

(34) "Significant feature" means an outstanding, unique, rare or otherwise significant aesthetic, scenic, botanical, zoological, geological, historical, archaeological, scientific or recreational feature which is identified in the management plan or by the management agency as occurring within a given wild river corridor.

(35) "Skid" means to transport logs by sliding or dragging along the ground.

(36) "Skid trail" means a trail developed for the purpose of skidding logs from the stump to a log landing area.

(37) "Slash" means the residue left after the economically usable portion of cut trees is removed from a harvest area.

(38) "Surface disturbance" means any disturbance of the ground surface which involves the clearing of vegetation or excavation of soil, rock or other materials occurring on or near the ground surface.

(39) "Visual intrusion" means resulting in the disruption, degradation or impairment of the natural or primitive appearance of an area in a wild river corridor, as viewed from the river or other designated public use area, and includes any land use that does not remain visually subordinate to the characteristic landscape.

(40) "Watershed" means that area enclosed by a topographic divide from which direct surface run-off from precipitation normally drains by gravity into the stream above a specified point.

(41) "Wild river" or "wild river corridor" means a stream segment and adjacent shoreland within boundaries set forth in 401 KAR 4:100 which are designated in accordance with KRS 146.241.

(42) "Wild rivers system" means the collective wild rivers as designated in KRS 146.241 and amendments.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1988 at 7 p.m. in the Ground Floor Auditorium, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Robert W. Ware, Manager, Water Quality Branch, Division of Water, Department for Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sherri Evans (564-3410)

(1) Type and number of entities affected: N/A. This regulation merely sets forth definitions to be used to clarify certain essential terms used in 401 KAR 4:120 to 4:140 which are not clearly defined by their context.

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

1. First year: N/A. This regulation merely sets forth definitions.

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A. This definition merely sets forth definitions.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: N/A. See (1)(a).

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements:

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulatory program requires a consistent set of definitions of technical terms. No other alternative exists.

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

(a) Necessity of proposed regulation if in conflict: 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. There is no basis for tiering because this regulation merely defines terms used in regulations 401 KAR 4:120-140, and the terms affect all regulated entities equally.

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

401 KAR 4:120. Wild rivers administration and management.

RELATES TO: KRS 146.220, 146.270, 146.290, 146.310, 146.350, 224.045
PURSUANT TO: KRS 146.270, 224.033, 224.045, 224.081, 224.083, 224.085
NECESSITY AND FUNCTION: KRS 146.270 authorizes the secretary to adopt rules and regulations necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them. Emphasis shall be given to protecting aesthetic, scenic, historical, archaeological, ecological and scientific features of the area. This regulation sets forth guidelines for the administration and management of the wild river corridors and for the use of these areas by the public, and criteria for delineating existing, conforming, new and prohibited land uses.

Section 1. Applicability. This administrative regulation shall apply to all lands and waters under state jurisdiction which are located within designated wild river boundaries as set forth in 401 KAR 4:100.

Section 2. General Policy. (1) The wild rivers shall be managed to preserve their free-flowing condition and to protect the outstanding and unique aesthetic, scenic, recreational, fish and wildlife, botanical, historical, archaeological and other scientific and cultural features which qualified the streams for designation as wild rivers.
(2) Additional management objectives shall be to afford an opportunity to enjoy natural streams; to attract visitors and to preserve for future generations the beauty of certain areas untrammeled by man.

Section 3. Management Plans. (1) The management of a given wild river corridor shall be according to a management plan developed by the cabinet.
(2) The cabinet shall consult with landowners in the affected wild river corridor, citizen groups, industries and appropriate local, state and federal agencies in the preparation of each management plan.
(3) Public participation in the development of a management plan shall be provisioned by at least one (1) public hearing on the draft management plan followed by a thirty (30) day comment period prior to finalizing the plan.
(4)(a) The hearing, or hearings, shall be conducted in one (1) of the counties through which the designated portion of the river flows.
(b) Notice of hearing shall be given in accordance with the provisions of KRS Chapter 424. The notice shall:
1. State the time, place and purpose of the hearing;
2. State the name and address of the person from whom a copy of the proposed management plan may be attained;
3. Be published not less than seven (7) nor more than twenty-one (21) days prior to the hearing;
4. Be published in the county, or counties, through which the designated portion of the river flows, and in at least one (1) major newspaper; and
5. Set forth the address to which written comments on the draft management plan may be submitted, and the date by which those written comments shall be submitted.
(c) The hearing shall be conducted by a designated representative of the division who shall control the order of presentation.
(d) Any interested person may appear at the hearing and make an oral or written presentation concerning the draft management plan. All oral presentations shall be recorded.
(e) All written and oral comments shall be considered in the development of the management plan.
(5) Responsibility for the administration and management of a wild river shall be clearly delineated in the management plan for that river, and any management agreements between the cabinet and local, state or federal agencies having overlapping jurisdiction over lands or waters within the wild river corridor shall be incorporated into the plan.

Section 4. Existing or Conforming Land Uses. (1) Under the provisions of KRS 146.290, land uses which are lawfully existing at the time the boundaries of a wild river are designated may continue in the same manner and location even though the use does not conform to the purpose and intent of the Kentucky Wild Rivers Act or the management plan for a given wild river.
(2) Other than existing uses, land uses within wild river corridors shall conform to the purposes and intent of the Kentucky Wild Rivers Act and the duly adopted management plan for each wild river.
(3) Conforming uses shall include wilderness type recreation such as nonmotorized boating, hiking, hunting, fishing, camping, sightseeing and horseback riding, as well as scientific research, environmental education and related activities which will preserve the primitive character and natural and cultural resources of the area.
(4) Other land uses shall qualify as conforming uses if they satisfy one of the following conditions:
(a) The routine maintenance, repair, renovation or replacement of existing roads, buildings or other structures or improvements to an existing use provided that such improvements do not extend or enlarge the confines of the existing use, involve damage to or removal of natural vegetation, soil or other natural features from an area one-half (1/2) acre or more, nor impose a visual intrusion on the river or other designated public use areas.
(b) The selective cutting of firewood or individual trees by a landowner provided that the cut impacts less than one-half (1/2) acre and does not impose a visual intrusion from the river or other designated public use areas.
(c) Landscaping to prevent erosion or other damage to property or to screen by natural means such as trees or shrubs an existing land use from the river, provided that such landscaping uses native vegetation wherever conditions permit and is compatible with the maintenance of scenic vistas from the river and other designated public use areas.

(d) Fencing that does not require damage to or removal of trees for installation, that blends in with the surrounding landscape, and is set back a minimum of fifty (50) feet from the nearer bank of the wild river.

(e) The removal of noxious weeds from an area using manual or mechanical methods, including direct application but not aerial spraying, of herbicides that are short-term, nontoxic to fish and wildlife and will not leach into surface waters or groundwater.

(f) The removal of diseased or insect-infested trees from an area greater than one-half (1/2) acre in size upon written authorization from the cabinet based on the recommendation of a professional forester.

Section 5. Permitted Land Uses. (1) Except for land uses prohibited under Section 6 of this regulation or delineated in Section 4 of this regulation, land use changes require that the landowner obtain a change of use permit from the cabinet prior to commencing the new use.

(2) Land use changes authorized by the cabinet through a change of use permit shall comply with all applicable standards set forth in 401 KAR 4:140.

(3) Land use changes which require a change of use permit shall include, but not be limited to:

(a) A resource removal, by methods other than surface mining.

(b) The selective cutting of timber as defined in 401 KAR 4:110.

(c) A new agricultural use that would put new acreage into production, put existing pasture or range into cultivation, require clearing of timber, or construction of roads, buildings or other structures.

(d) Any construction activity involving new or existing roads, buildings or other structures that is not exempted in Section 4 of this regulation.

Section 6. Prohibited Land Uses. Pursuant to the provisions of KRS 146.290, surface mining, timber harvest by methods other than selective cutting and in-stream disturbances are prohibited within a wild river corridor. In-stream disturbances shall include, but not be limited to, dam construction, dredging, spoil or fill deposition, channel diversion, channelization and mining of streambed materials. Also prohibited is the construction of roads, buildings or other structures to effect any use other than an existing or permitted land use as set forth in Section 4 or 5 of this regulation.

Section 7. Public Use. (1) Public use of wild river corridors shall be limited to the public waters and public lands or interests in lands acquired through lease, easement or other agreement entered into by the landowner. Public use of private property shall require permission from the landowner. Trespassing is subject to penalty as set forth in KRS 146.990. This section applies to the use of public waters and state-owned lands within wild river corridors by the public.

(2) Maps delineating the boundaries of public lands within wild river corridors will be prepared by the cabinet for public use.

(3) In accordance with KRS 146.290, transportation shall be by foot, canoe, kayak, horseback or other nonmotorized means except on existing public roads, as required for administrative and resource protection purposes, or as necessary to effect an existing or permitted land use.

(4) The management agency may condition or deny public use of a wild river if such use is causing substantial adverse impact on the scenic, aesthetic, natural, cultural, scientific or recreational resources; if private property is being damaged; or, if user safety is being jeopardized. Such conditions may include temporary closure of public access points or trails.

(5) Cultural artifacts, relics, fossils and souvenirs shall not be removed from their site of discovery in a wild river corridor. Deliberate damage to plants, animals, artifacts or other special features is prohibited. A written request shall be submitted to and approved by the division prior to the collection of any natural or cultural materials.

(6) Burying, dumping or depositing litter, soil, garbage, waste, scrap or other unsightly or offensive materials other than in receptacles provided for this purpose is prohibited.

(7) Horseback riding shall be allowed only on trails specifically designated for this use.

(8) Except where specifically authorized or designated by the management agency, overnight camping and campfires shall be prohibited within fifty (50) feet of a wild river. No open fire shall be left unattended, and all fires shall be completely extinguished after use. Live vegetation shall not be cut for firewood.

(9) Camping within a state park shall be in accordance with 304 KAR 1:040.

(10) Hunting, fishing and trapping shall be allowed only on public lands or lands in which the state has acquired an interest, or on private land with the landowner's written permission, subject to state and federal fish and wildlife laws and regulations, and under the following conditions:

(a) The construction of permanent shelters, lean-tos or other buildings is prohibited. Temporary blinds, stands or other structures shall be erected in a manner that will prevent injury to trees.

(b) Trapping is prohibited within fifty (50) feet of designated boat access sites, boat portage trails and other designated public hiking trails, picnic areas and campgrounds.

(11) Carrying or discharging a firearm, bow and arrow or explosive substances shall be prohibited for any purpose other than hunting in accordance with state wildlife laws and the other provisions of this regulation.

(12) Swimming, bathing or other in-stream recreational use of a wild river shall be in accordance with Division of Water Patrol safety standards (401 KAR 4:130 and 4:080). Entering a wild river from the shores of a state park for swimming, bathing or other in-stream recreational use shall be allowed only in areas designated as swimming areas by the Department of Parks.

(13) Conduct which disturbs the peace or causes damage to private property within a corridor is prohibited.

(14) Public users of wild rivers are encouraged to leave in passing no mark upon the land that might diminish its value to another, and to make every effort to protect and enhance the unspoiled beauty of these areas as components of Kentucky's unique heritage.

Section 8. Enhancement of Recreational Opportunities. (1) The development of public access to a wild river will be compatible with the purposes and intent of KRS 146.200 to 146.360 and the duly adopted management plan for a given river, and shall conform to the natural character of the area.

(2) Development of public access may be used to enhance dispersed, nonmechanized recreational opportunities and provide information on safety, orientation, rules and regulations and interpretation of special features in the area.

(3) Trails developed by the management agency will be designed and maintained to provide for nonmotorized recreational uses and to prevent soil erosion and compaction, trampling of vegetation, and other damage to the natural beauty and resources of the area.

(4) Other than the permitted select cutting of trees or the removal of trees that obstruct river navigation or otherwise constitute a health or safety hazard, there shall be no cutting or removal of natural vegetation, living or dead, to create scenic vistas, except as expressly provided by law.

Section 9. Commercial Uses. (1) The operator of a new commercial service within a wild river corridor shall submit written notification to the cabinet not less than thirty (30) days prior to commencing such use.

(2) The construction of access roads, ramps, wharves or boat docks, buildings or other facilities required to effect a commercial use shall be located outside of a wild river corridor unless authorized by a change of use permit.

(3) The operator of a commercial service on a wild river shall comply with all applicable provisions of this regulation, and shall be responsible for ensuring that the commercial use does not impair or contribute to an adverse impact on the aesthetic, scenic, ecological, scientific, recreational or other significant features in the corridor as identified in the management plan or by the management agency, or cause substantial damage to soils, vegetation, fish and wildlife or water quality.

(4) The management agency may condition or deny commercial use of a wild river, as provided in Section 7(5) of this regulation.

(5) In accordance with 304 KAR 1:030, operation of a commercial activity within a state park requires prior written consent from the Department of Parks.

(6) Commercial harvest of mussels by any method is prohibited in areas where mussel species considered endangered or threatened by the Kentucky Academy of Science are known to occur.

Section 10. Scientific Study. (1) A research plan shall be submitted to the cabinet for approval prior to the commencement of any scientific study within a wild river corridor.

(2) A research plan submitted to the cabinet on a form supplied by the cabinet shall contain the following information:

(a) The name, address, telephone number, professional affiliations and qualifications of the principal investigator.

(b) A U.S. Geological Survey 7.5 minute topographic map delineating the location and extent of the study area.

(c) The estimated dates of initiation and completion of the study.

(d) The objectives, methods and significance of the study and a statement as to the necessity or advantages of conducting the study within the wild river corridor.

(e) Plant or animal species or any special features which may be affected by the study, and the type and extent of any such effects.

(f) A list of any plants, animals or other resources or materials to be collected, the estimated quantity to be collected, and the permit numbers of collection permits obtained from state and federal agencies.

Section 11. Utility Right-of-way Construction. (1) As set forth in KRS 146.290, the construction of a transmission line or pipeline right-of-way within any portion of a wild river corridor shall require written approval from the secretary prior to the initiation of any construction activities within the wild river boundaries.

(2) Authorization to construct a right-of-way shall require application by the owner of the utility or pipeline company or their engineering representatives, on an application form supplied by the cabinet. The application shall include a land use plan containing the following information:

(a) A U.S. Geologic Survey topographic map to scale not greater than one (1) inch equal to 500 feet, showing the precise route and dimensions of the right-of-way.

(b) The estimated dates for initiation and completion of construction and the name, address and telephone number of the person or persons in charge of the construction.

(c) A detailed description of the methods of construction and specifications, including profile sheets bearing the seal and signature of a registered professional engineer.

(d) A statement of possible alternate routes for the right-of-way and why the proposed route was selected.

(e) A detailed reclamation plan designed to return the disturbed area as nearly as possible to its former appearance and condition, including the use of native species to revegetate disturbed areas.

(f) A detailed description of proposed methods for maintaining the right-of-way, including the brand names and methods of application of any herbicides to be used.

(3) Upon receipt of an application, an inspection of the proposed construction site will be made by cabinet personnel with the property owner and applicant or their representatives, and personnel from appropriate state and federal agencies.

(4) The secretary shall notify the applicant as to whether the application is approved or denied within sixty (60) days following receipt of the application, and will state the reasons for the decision.

(5) If an application is denied, the applicant may submit a revised application to adequately address the reasons for denial stated in the secretary's written decision.

(6) An application will be approved only if there is no possible alternative route for the right-of-way that would bypass or cause less impact to the wild river corridor, and the applicant agrees to restore all disturbed area within the wild river corridor as nearly as possible to its former appearance and condition,

as required under KRS 146.290.

(7) Authorization to construct a right-of-way shall contain, but not be limited to, the following conditions:

(a) Wherever feasible, the right-of-way shall be routed to avoid steep slopes, erodible soils, surface waters and areas with high water tables, public recreation areas, and other significant natural and cultural areas identified by the cabinet, and shall be the minimum width necessary for construction and maintenance.

(b) Adequate measures shall be taken to control sediment and any hazardous substances, and to minimize the visual impact of the right-of-way when viewed from the wild river or other designated public use areas.

(c) Any timber cutting required shall be according to the provisions of 401 KAR 4:140, Sections 4 through 7, Sections 9 through 14, and Section 17(10) through (21).

(d) Every effort shall be made to minimize disturbance to the streambed, stream banks and fish and wildlife habitat during construction activities, and to keep timber slash and other debris out of surface waters and the immediate floodplain.

(e) Stream crossings by equipment or vehicles in a wild river corridor shall require the use of a temporary bridge or other methods approved by the cabinet and be designed so as not to impede stream flow. Construction across surface waters shall occur when local fish and wildlife are not spawning or nesting.

(f) Vehicles and equipment shall be stored outside of the wild river corridor when not in use.

(g) Aerial spraying of herbicides shall not be permitted within the boundaries of a wild river. Direct application of herbicides at ground level shall be limited to brands that are nontoxic to fish and wildlife.

(h) Pipeline relief valves shall be located outside of the wild river corridors.

(i) Primary consideration shall be given to underground placement of transmission lines and pipelines. Overhead transmission lines and towers shall be in accordance with environmental guidelines required by the Rural Electrification Authority, and shall be designed so as to prevent electrocution or other injury to wildlife.

(j) Reclamation shall consist of establishing a permanent vegetative cover on all disturbed surfaces, planting native trees or shrubs where necessary to establish a buffer zone along the banks of the wild river, implementing measures to prevent access by off-road vehicles, and removing all evidence of construction activities.

(k) A performance bond, in an amount to be determined by the cabinet, shall be required for reclamation if the cabinet determines that the proposed construction may potentially damage, degrade or otherwise have an adverse impact on any significant feature known to occur within the wild river corridor.

(l) The applicant shall provide written notice to the cabinet upon completion of reclamation, and cabinet personnel will inspect the construction site to verify compliance with all permit conditions before the bond is released.

Section 12. Road Construction. (1) In accordance with KRS 146.290, new permanent roads shall not be constructed within a wild river corridor except as authorized by the secretary to enhance recreational opportunities or to protect soil, water or other natural resources.

(2) Temporary roads shall be constructed within a wild river corridor only as necessary to effect a use authorized by a change of use permit, and shall be closed and reclaimed immediately after the permitted land use is concluded.

(3) Any construction required to improve, repair or replace existing state or county-maintained roads or bridges shall require full environmental review by the division and other appropriate state natural resources agencies prior to any construction activity.

(4) During authorized construction activities, no heavy equipment shall be driven through or into a wild river, and every feasible precaution shall be taken by the operator to prevent damage to streambank vegetation, protect fish and wildlife habitat, control soil erosion and prevent stream sedimentation.

(5) When recommended by the secretary, design plans for improving or replacing a bridge across a wild river shall consider provisions for enhancing public access to the river for recreational uses consistent with the provisions of KRS 146.200 to 146.360.

Section 13. Agency Notification. (1) State or local government agencies which engage in or regulate any activity within the watershed of a wild river shall notify the cabinet prior to the initiation of any activity which may adversely affect the river, and shall provide the cabinet an opportunity to review proposals and plans for the new activity.

(2) A change of land use on state-owned lands within a wild river corridor that does not conform with the purpose and intent of KRS 146.200 to 146.360 shall require that the state agency that owns the affected land obtain a change of use permit from the cabinet. The secretary shall determine if a change of use permit is required.

Section 14. Fire Control. (1) State fire control provisions of KRS Chapter 149, and any which may be established by cooperative agreement, shall be strictly enforced.

(2) Fire shall be controlled by methods that require the least disturbance to soils and vegetation, and use of heavy equipment shall be limited to situations where an eminent threat to life or personal property exists. Any fire hazard reduction or replanting after fire shall be coordinated with the division.

Section 15. Signs. (1) The posting of commercial signs, advertisements, announcements, campaign slogans or other written messages other than those related to permitted uses shall be prohibited.

(2) As otherwise allowed by law, signs may be installed by the management agency, local government, landowner or public utility for the purpose of public safety, posting of property boundaries or property protection, identification of river corridor boundaries and public access points or as otherwise deemed necessary for resource protection, interpretation or regulatory purposes.

(3) Signs shall be of a design and construction conforming to the natural setting in which they are located, and shall not exceed twelve (12) square feet in size.

(4) Any person with the permission of the landowner may post informational and directional signs within a corridor as are necessary to the continuance of an existing use, provided the sign does not exceed four (4) square feet in size.

Section 16. Enforcement and Hearings. (1) Whenever the cabinet has reason to believe a violation of 401 KAR Chapter 4 has occured, a notice of violation shall be issued.

(2) The provisions of KRS 224.081 shall apply to any cabinet order or determination made pursuant to the provisions of 401 KAR Chapter 4.

(3) Hearings required to be conducted due to the issuance of a notice of violation issued pursuant to subsection (1) of this section or the filing of a petition pursuant to subsection (2) of this section shall be conducted pursuant to KRS 224.083.

(4) Appeals may be taken from any final order of the cabinet pursuant to KRS 224.085.

(5) Violations of the provisions of 401 KAR Chapter 4 shall be liable to the civil penalty set forth in KRS 146.990(1).

Section 17. Severability. In the event that any provision of KRS 146.200 to 146.360 or any regulation promulgated pursuant hereto is found to be invalid by a court of competent jurisdiction, the remaining wild rivers regulations shall not be affected or diminished thereby.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1988 at 7 p.m. in the Ground Floor Auditorium, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing or in submitting written comments shall notify this agency in writing by August 21, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Robert W. Ware, Manager, Water Quality Branch, Division of Water, Department for Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sherri Evans

(1) Type and number of entities affected: Generally, the entities affected by the proposed regulation include: (1) entities who own property within a wild river corridor (the regulated public); (2) outdoor recreationists, commercial recreation services, scientists and educators who use the wild rivers; (3) utility companies who construct within or through a wild river corridor; and (4) the general public.

Entities Owning Land Within Wild River Corridors

The 26,380 acres of land within the nine designated wild river corridors are owned by private, state and federal entities, the latter of which is exempt from the wild rivers statutes (see Stephens vs. Commonwealth). Approximately 7,350 acres (28%) are in private ownership, 925 acres (3.5%) are owned by state agencies and 18,100 acres (68.5%) are owned by various federal agencies. Only two state agencies own land within the wild river corridors: the Department of Parks and the Kentucky Nature Preserves Commission. The wild river corridors of the Green River and the Big South Fork consist entirely of federal land-holdings. Excluding federal and state agencies, 112 private entities have been identified as owning lands within the corridors in a total of ten counties, as listed below. Some entities own property along more than one wild river or in more than one county, and are considered as a separate entity in each county in which land is owned. Due to the amount of time and resources that would be required to identify all persons owning interests in all wild rivers properties, multiple owners of interest in a single property are considered as a single land-owning entity for that property.

County	No. of Private Entities
Harlan	(9)
Laurel	(16)
Letcher	(8)
McCreary	(63)
Menifee	(1)
Pulaski	(10)
Rockcastle	(1)
Wayne	(12)
Whitley	(10)
Wolfe	(12)

Recreational, Commercial, Scientific and Educational Users of Wild Rivers

Recreational Users. Recreational use of the wild rivers includes wilderness types of activities that do not require motorized transportation, such as canoeing, camping, fishing, hunting, hiking, picnicking and swimming. Some uses are seasonally dependent on water levels and other weather-related factors. The type and number of recreational users varies among rivers depending on whether the river corridor lands are primarily in public or private ownership. Two of the river corridors (Big South Fork and Green) are entirely in federal ownership; four of the corridors within Daniel Boone National Forest (Red, Rockcastle, Cumberland and Rock Creek) are mosaics of federal and private lands; two (Little South Fork and Martins Fork) are almost exclusively in private ownership; and the Bad Branch corridor is owned by state and private entities, including the Nature Conservancy, a nonprofit conservation organization.

Privately-owned corridor lands are used by local residents primarily for fishing, swimming, hunting and collecting wild plants; public use is limited to on-the-water activities such as canoeing and kayaking, fishing from a boat or swimming. Public lands are used for these activities plus camping, picnicking, hiking, horseback riding and horse camping, and various

forms of nature observation and study. Many users participate in two or more activities during a single visitor-day. According to the recreational demand analysis in the Kentucky Wild Rivers Statewide Management Plan[1], user demand for outdoor recreation, particularly activities associated with wilderness attributes, are expected to continue to increase indefinitely. Canoeing is expected to grow five to six percent annually during the next twenty years, and the rate of river recreation could as much as double by 1990.

Up-to-date data on user rates for the wild rivers are limited. Most of the available data are derived from U.S. Forest Service figures which primarily reflect use of developed areas only and include areas and uses occurring outside of the wild river corridors. Estimates of user rates and carrying capacity for selected activities in the wild river corridors are presented in Table 1. Table 2 provides projected increases in demand during the period 1978 to 1995. Applying the data in Table 2 to the user rates in Table 1, which are based on data from 1978 or earlier (unless otherwise noted), the amount of usage to be expected for each activity in 1995 can be predicted (Table 3).

Table 1. Estimated User Rates and Carrying Capacities for Selected Recreational Uses of Some Kentucky Wild Rivers (Visitor-days/year)

	CANOEING		FISHING	
River	User Rates	Carrying Capacity	User Rates	Carrying Capacity
Little S.Fork	NR	6,636	NR	11,115
Cumberland[1]	16,500	21,565	16,400	30,602
Rockcastle[2]	1,415	23,968	10,934	1,905
Red[3]	3,280	5,040	2,440	10,700
Rock Creek[4]	NA	NA	8,100	14,108
Bad Branch[5]	NA	NA	NA	NA
TOTALS	21,195	-	37,874	-

	HUNTING		HIKING	
River	User Rates	Carrying Capacity	User Rates	Carrying Capacity
Little S.Fork	NR	357	NR	20,657
Cumberland[1]	20,100	865*	10,500	140,286
Rockcastle[2]	6,624	6,653	606	315,360
Red[3]	3,620	375*	19,540	29,200
Rock Creek[4]	7,800	1,708	4,600	NR
Bad Branch[5]	NA	NA	400	NR
TOTALS	38,144	-	35,646	-

	CAMPING		PICNICKING	
River	User Rates	Carrying Capacity	User Rates	Carrying Capacity
Little S.Fork	NR	NR	NR	NR
Cumberland[1]	11,600	69,350	NR	NR
Rockcastle[2]	4,400	80,032	NR	NR
Red[3]	59,500	7,300	NR	NR
Rock Creek[4]	13,900	6,800	2,400	NR
Bad Branch[5]	NA	NA	NR	NR
TOTALS	89,400	-	2,400	-

FOOTNOTES:
NA Not applicable
NR Not reported
1 User rates based on 1977 data for public lands only.
2 User rates based on 1978 data for a 28-mile segment of the river.
3 User rates based on average figures for 1974 through 1978 and include all public lands in and adjacent to river corridor.
4 User rates for fishing, hunting, and hiking based on 1975 data; user rates for camping and picnicking based on 1984 U.S. Forest Service data for developed sites only.
5 User rates estimated by The Nature Conservancy for 1985.
* Refers to hunting capacity for deer, squirrel and grouse only.
** Includes only lands within the wild river corridor.
Source: Kentucky Wild River Management Plans, Miller/Whiry/Lee Inc. (1980).

Table 2. Statewide Changes in Demand for Outdoor Recreation 1978-1996

Activity	Percent Change in Demand
Hiking	15.1
Camping	16.0
Hunting	19.6
Fishing	17.8
Boating	3.9
Canoeing	13.2

Table 3. Projected 1995 User Rates for Selected Recreational Uses of Some Kentucky Wild Rivers (Visitor-days/year)

River	CANOEING	FISHING	HUNTING
Cumberland	18,678	19,319	24,040
Rockcastle	1,602	12,880	7,922
Red	3,713	2,874	4,329
Rock Creek[1]	NA	9,542	9,328
Bad Branch	NA	NA	NA
TOTALS	23,993	44,615	45,619

River	HIKING	CAMPING
Cumberland	12,085	13,456
Rockcastle	697	5,104
Red	22,490	69,020
Rock Creek[1]	NR	11,484
Bad Branch	460	NR
TOTALS	35,732	99,064

FOOTNOTES:
1 Projected user rate for camping based on 1975 data.

A more comprehensive study of river use was conducted by the Department of Fish and Wildlife Resources[2] on the Rockcastle River. This study, based on on-site surveys of river users, found an annual use by 36,547 persons who spent $1,616,095.60 in pursuit of recreational activities. Additional data from this study can be found in the regulatory impact analysis prepared for 401 KAR 4:140.

User rates for the wild river segment of the Green River, which occurs entirely within Mammoth Cave National Park, are not available. The most popular recreational activities among the 1,671,591 visitors to the park in 1983 were camping, backpacking, fishing and canoeing on the Green River[3].

Scientific/Educational Users. Most of the wild rivers corridors contain features considered to

be of high scientific or educational value. These include unusual geologic features, undisturbed or minimally disturbed archaeological sites, and outstanding botanical and zoological features, such as unique or rare species, natural areas and undisturbed ecological communities. They also serve as reserves for wild strains of genetic material that may be developed into new agricultural crops or new medicinal compounds. Because they provide a wide range of water conditions, from mild flatwater to whitewater, they provide training areas for instruction in paddling skills and safety. Because of the pristine water quality in some of the wild rivers, they are sources of water quality data useful to biologists and natural resource program administrators in determining baseline water quality conditions and establishing reasonable water quality standards.

Wild rivers provide outdoor laboratories for field studies of natural ecological processes and systems, taxonomic relations and life histories of individual species. Because they harbor a relatively high number of endangered and threatened species, particularly those that require clean, flowing water for at least part of their life cycle, wild rivers may prove to be crucial reserves to be used for research into the environmental requirements and limitations of these species. Data on scientific/educational usage of the wild rivers are not available, but there are a number of research-oriented institutions and natural resource agencies in Kentucky staffed by potential scientific users of wild rivers. Additionally, industries involved in pharmaceutical or horticultural research may obtain genetic materials from wild river corridors. Classes from any of the elementary schools, high schools, colleges and universities in the state, particularly those located in one of the ten counties through which the wild rivers flow, are potential users of the wild rivers as outdoor classrooms.

Commercial Services. There are currently seven commercial outfitter and livery services that operate on the wild rivers. These services offer rental of canoeing equipment, shuttle services and/or guided river tours. Operators of a rafting service on the Cumberland River pay a per diem commission to the Department of Parks for use of a river access site within Cumberland Falls State Park. This service draws additional visitors to the park. Operators using access sites within Daniel Boone National Forest are required to obtain a special use permit and pay an annual fee. Use of privately-owned access sites requires permission from the landowner.

Utility Companies

There are a number of utility companies in Kentucky that could potentially develop a utility right-of-way across or through a wild river corridor. During the 14 years in which the wild rivers system has been in existence, one transmission right-of-way has been constructed in a wild river corridor.

General Public

In addition to the entities described above, the proposed regulation will indirectly affect the general public of Kentucky. Using 1980 basin population projections as contained in the River Basin Management Plan for Kentucky, 434,541 persons inhabit the Green River Basin; 607,165 persons inhabit the Kentucky River Basin; 309,478 in the Licking River Basin; 964,704 in the Ohio River Basin; 103,222 in the Lower Cumberland Basin; 260,273 in the Upper Cumberland Basin; 186,466 persons in the Big Sandy River Basin; 55,861 in the Mississippi River Basin; 111,208 in the Tennessee River Basin and 844,108 persons in the Salt River Basin. A large portion of the above combined population may be indirectly affected by the proposed regulation.

According to a statewide recreation survey conducted in 1984 as part of the statewide comprehensive outdoor recreation planning process (SCORP)[3], a large percentage (40%) of Kentuckians cited protection of the state's natural resources as the most important recreational issue. Over 2/3 of the respondents rated preservation programs such as the wild rivers as very valuable.

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

1. First year: Generally, the proposed regulation further clarifies existing requirements and terms used in KRS 146.200 to 146.360. None of the provisions of this regulation are expected to result in a significant cost to the regulated public or to recreational, commercial or other users. There are no fee requirements, and any costs incurred will be indirectly related to compliance costs and reporting and paperwork requirements. Costs are not expected to change significantly after the first year, although benefits may be expected to increase.

Entities owning land within wild river corridors (regulated public), recreationists and the general public are most likely to accrue benefits from this regulation. Landowners will benefit from the rules of conduct for public use of wild rivers, which are designed to discourage trespassing, littering, property damage and disturbance of the peace. Clarification of regulated and nonregulated land uses will assist the regulated public in determining when a change of use permit is required.

Provisions designed to preserve the aesthetic appearance, natural primitive character and other outstanding resources will benefit recreational, scientific and educational users as well as the general public. Recreationists will benefit from the provisions that assure present and future opportunities for outdoor experiences on the primitive end of the recreation spectrum, and maintenance of the high level of water quality necessary for primary contact recreational uses. Resource protection provisions will benefit scientific researchers by providing continued opportunity for the study of relatively undisturbed archaeological and ecological conditions. Such provisions benefit the general public by preserving outstanding examples of their natural and cultural heritage for present and future generations.

Some costs for paperwork and reporting requirements may be accrued by entities required to notify or obtain authorization to conduct certain activities within a wild river corridor (see reporting and paperwork requirements). Additional minimum costs may be incurred by utility companies constructing in or through a wild river corridor for (1) engineering services needed to develop a land use plan as required to apply for project authorization; and (2) compliance with conditions for aesthetic and

environmental protection required under such authorization.

2. Continuing costs or savings: Long-term costs will not increase significantly above the rate of inflation. Long-range benefits to landowners, recreationists, other users and the general public are anticipated to increase as the aesthetic, natural, cultural, scientific and recreational values of unregulated streams are reduced by uncontrolled land use development and associated nonpoint source water pollution.

Past user data indicate that demand for outdoor recreation will continue to increase while opportunities for primitive recreational experiences will continue to decline on streams outside of the wild rivers system. According to the 1984 SCORP, statewide user demands for camping, picnicking, fishing, boating and swimming are high, those for hiking and hunting are moderate and demands for canoeing are low. In the SCORP report, the U.S. Forest Service predicted that future demands will create a deficiency in areas such as whitewater rivers, large areas of continuous open land and areas with unique natural features that allow dispersed uses such as hiking, horseback riding and canoeing. As user demands increase and recreational opportunities decrease, wild rivers may become threatened by over-use, which may degrade both the natural resources and the recreational experience of the user as well as the privacy of local residents. This regulation provides the flexibility necessary for future management decisions required to balance the level and extent of visitor use with resource protection.

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

(b) Reporting and paperwork requirements: This regulation requires (1) written notification to the cabinet of any new commercial service operating within a wild river corridor; (2) submission of a research plan to the cabinet to obtain authorization to conduct a scientific study within a wild river corridor; and (3) submission of a land use plan to obtain authorization from the cabinet to construct a utility right-of-way in or through a wild river corridor. A state agency proposing to conduct a new land use on state-owned land within a wild river corridor must submit an application to the cabinet for a change of use permit if the proposed use is not consistent with the purpose and intent of KRS 146.200 to 146.360.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation will have no direct effect on the operation or costs of the NREPC. The Cabinet has already internalized associated costs within normal budget appropriations. The provisions of this regulation follow cabinet policies and procedures established to carry out the mandates of the wild rivers statutes and does not change the basis for routine procedures involved in permitting, compliance monitoring or enforcement.

2. Continuing costs or savings: If recreational use of the wild rivers continues to increase as predicted by various sources, it may become necessary in the future to establish additional staff positions to monitor and enforce the rules for public use of the rivers and adjacent lands.

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

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: This regulation does not contain any significant changes in established policies and procedures and should not result in any significant effect on state revenues. Long-term local revenues may benefit from increased tourism associated with sightseeing, sport fishing, canoeing and other recreational opportunities provided by maintaining these streams in a natural, aesthetic state.

State land resource programs have not been found to result in an unfavorable impact on any state's overall economy, probably because land-use laws are used to improve the quality of growth rather than reduce the quantity of growth[4]. A study of the economic impacts on areas designated as natural rivers in Michigan found no significant difference in real estate market demand or activity as compared to comparable nondesignated streams[5]. The benefits accrued to the general public for protecting wildlife habitat, sport fisheries, water supply, floodwater storage and recharge, livery income, tourism, timber and watershed protection are generally believed to outweigh the minimal costs borne by the regulated public and local economy due to land use restrictions[1].

(4) Assessment of alternative methods; reasons why alternatives were rejected: A no-action alternative was rejected because the adoption of rules or regulations necessary for the preservation and enhancement of the wild river corridors and for control of recreational, scientific and other uses of these areas in a manner that shall not impair them, is mandated by KRS 146.270. One alternative that was considered was no regulation of public use because the wild river corridors are generally remote and such rules will be difficult to enforce. The rules for public conduct were retained, however, due to concerns for public safety and concerns for personal safety that have been expressed by persons residing in some of the more remote areas.

There is a recognized need to clarify some of the terms and provisions of the wild rivers statutes to eliminate confusion among the regulated public concerning land use changes and permitting requirements. An attempt was made to recognize the many kinds of land uses that were in existence at the time each stream was designated, and to allow those uses to continue without a permit as provided in KRS 146.290. Discussions with property owners were useful in delineating the kinds of existing uses thus recognized.

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

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

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

(6) Any additional information or comments: No additional information or comments. None provided.

TIERING: Was tiering applied? Yes.

species to be used, and other measures required under 401 KAR 4:140, Section 14.

(5) The land use plan for underground mining shall include the following additional information:

(a) A second topographic map to scale not greater than one (1) inch equal to 500 feet, prepared, certified and registered by a professional engineer in accordance with the provisions of KRS Chapter 322, which shall delineate control of all surface and groundwater drainage on the site.

(b) Specific provisions for preventing water from entering the mine and for preventing discharges from the mine during and after the mining activity.

(c) A preblasting report, signed by a professional engineer, of the potential for damage to stream hydrology, including groundwater and subsurface drainage effects, historic structures, significant geologic formations or other significant features located within a wild river corridor.

(d) A dust control plan for the mining area.

(e) Evidence that the operation will not produce or discharge acid water or acid-forming materials.

(f) A copy of the subsidence control plan.

(6) The land use plan for oil and gas production shall include a spill prevention and control countermeasure plan to prevent and control accidental discharges of hazardous substances into surface and groundwaters.

(7) The land use plan for select cutting of timber shall contain the following additional information:

(a) A logging plan or other description of the planned cutting method and procedures for transporting logs and disposing of slash.

(b) The precise location and size of the log landing area(s) and the routing of haul roads.

(c) A timber marking report conducted and signed by a professional forester, indicating species composition, number of trees of each species, total volume and average volume per tree for each species, number of cull trees, and a description of the method used to mark the trees.

(d) A forest management plan developed by a professional forester may be submitted as part of the land use plan to waive the requirement of 401 KAR 4:140, Section 17(5) if it employs the selective method of cutting trees and is otherwise compatible with the purpose and intent of KRS 146.200 to 146.360.

(8) The land use plan for an agricultural use involving livestock or poultry production shall describe a system for storing and disposing of animal wastes and for excluding livestock from buffer zones.

(9) The land use plan for the construction and operation of a public access facility, boat dock, ramp or other recreational facility shall include the following additional information:

(a) Design plans, signed by a registered engineer, showing the layout of all planned facilities, including roads, parking areas, trails and buildings.

(b) Evidence that any structures which would extend into the water will not substantially impede natural stream flow.

(c) A list of all permits applied for to conduct the new land use, a required under KRS Chapter 151 and other applicable state and federal laws.

(d) A waste control and disposal plan, if applicable.

Section 3. Inspection. Within thirty (30) days following receipt of a completed permit application, cabinet personnel will conduct an inspection of the site of the proposed land use change to identify and map the occurrences of significant features and other sensitive areas which may require special protective measures.

Section 4. Public Hearing. (1) Within sixty (60) days following receipt of a completed permit application, the secretary, in accordance with KRS 146.290, will hold a public hearing on the application and will notify the applicant of same by certified mail, return receipt requested.

(2) Public notice of the hearing will be given according to the provisions of KRS Chapter 424 and will state the nature and location of the proposed change of use.

(3) At the hearing, any interested party may attend and be represented by counsel and shall be allowed to present evidence as to whether the proposed change of use is consistent with the wild river management plan, the purpose and intent of the Kentucky Wild Rivers Act and other applicable law. The hearing need not conform to the strict rules of evidence as practiced in the courts of the Commonwealth and shall be conducted so as to permit the full development of all relevant issues and to insure that all persons have a fair and reasonable opportunity to be heard.

(4) The hearing shall be recorded, and the application, comments received from the public, and recommendations from government agencies shall be entered into the record. The cost of transcription of the record shall be borne by any party requesting a transcript.

Section 5. Permit Application Review. (1) The secretary shall evaluate all matters on record in light of the provisions of KRS 146.290, and shall further consider:

(a) The possible effects of the proposed new use on water quality, adjacent lands, aesthetics, fish and wildlife, vegetation, geologic features, historical and archaeological sites, recreational values, and endangered and threatened species.

(b) Alternate uses to which the land could be put which would be more consistent with the purposes and intent of KRS 146.200 to KRS 146.360.

(c) Alternate locations, including any outside of the wild river corridor that may be more appropriate for the proposed land use.

(d) The extent to which the proposed change of use or an alternate use conforms to the river management plan developed pursuant to KRS 146.270.

(e) Whether the denial or the issuance of a permit is consistent with the cabinet's mandate to protect the waters of the Commonwealth for the use, welfare and enjoyment of all of its citizens, and with the rights of landowners to the beneficial use of their property.

(f) Any existing laws or administrative regulations which apply generally to the proposed change of use.

(g) Whether the proposed change of use constitutes a threat, directly or indirectly, to public health or safety.

(h) Secondary effects likely to be caused or

FOOTNOTES:
1 Kentucky Natural Resources and Environmental Protection Cabinet. 1980. Kentucky Wild Rivers Statewide Management Plan. Miller/Whiry/Lee, Inc.
2 Kentucky Department of Fish and Wildlife Resources. 1974. An inventory of recreational use and determination of the recreational potential of selected Kentucky water courses and associated wildlife habitats. P-R Project W-45.
3 Kentucky Department of Local Government. 1984. Statewide Comprehensive Outdoor Recreation Plan, Assessment and Policy Plan.
4 Healy, Robert G. 1976. Land Use and the States. John Hopkins University Press.
5 Michigan Department of Natural Resources. 1979. Economic impacts of natural river zoning regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes__X__ No____

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Section 13 requires that local government agencies notify the NREPC of plans for any activity in a watershed of a wild river that may adversely affect the river and provide the cabinet an opportunity to review proposals and plans for such activities.

3. State the aspect or service of local government to which this administrative regulation relates. May relate to road construction and other construction activities in the vicinity of designated wild river corridors.

4. How does this administrative regulation affect the local government or any service it provides? It requires that the local government notify the cabinet and provide the cabinet an opportunity to review plans for activities that may cause adverse impacts on a designated wild river.

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

401 KAR 4:130. Wild rivers change of use permit procedures.

RELATES TO: KRS 146.220, 146.270, 146.290
PURSUANT TO: KRS 146.270, 146.290, 146.990, 224.033, 224.045
NECESSITY AND FUNCTION: KRS 146.270 authorizes the secretary to adopt rules and regulations necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them. In such administration, primary emphasis shall be given to protecting aesthetic, ecological, scenic, historic, archaeological and scientific features of the area. Under the provisions of KRS 146.290, the select cutting of timber, a resource removal or an agricultural use may be allowed pursuant to regulations promulgated by the secretary upon the granting of a permit under the other provisions of KRS 146.200 to 146.360; uses which exist at the time the boundaries of a wild river are designated are exempt from this provision. KRS 146.290 requires that any permit granted to conduct a change of use shall contain such restrictions, terms and conditions as are appropriate to protect to the fullest extent possible the stream area and the public trust therein, within the intent of KRS 146.220. This regulation establishes the procedure by which a landowner, as defined in 401 KAR 4:110, may apply to the secretary for a change of use permit to conduct a new land use within a wild river corridor.

Section 1. Applicability. In accordance with KRS 146.290, a new land use activity shall not be undertaken within a wild river corridor until the landowner has obtained a change of use permit from the cabinet. This regulation applies to any landowner applying for a permit to change a land use within a wild river corridor.

Section 2. Permit Application. (1) A landowner desiring to commence the select cutting of timber, a resource removal or a new agricultural use on his or her property located within a wild river corridor shall apply to the secretary for a change of use permit on an application form supplied by the cabinet.
(2) The application shall include the name, address and telephone number of the landowner and the operator of the new land use.
(3) The application for removal of a subterranean resource shall include the names and addresses of all applicable surface owners. The applicant shall notify all applicable surface owners at the time application is made for a change of use.
(4) The application shall include a land use plan to consist of:
(a) A U.S. Geological Survey 7.5 minute topographic map which delineates the exact location and extent of the new use and any access roads being constructed or improved to effect the new use, in relation to all surface waters within the wild river corridor.
(b) The estimated dates of initiation and completion of the new use, where applicable.
(c) An estimate of the total acreage of the new use.
(d) A description of the methods for conducting the new land use including, but not limited to, any construction, excavation, blasting or tree cutting activities.
(e) A description of best management practices for controlling soil erosion and stream sedimentation, maintaining existing water quality, handling of wastes, hazardous substances and excess rock and earth, and preventing and controlling spills and accidents.
(f) A list of herbicides, pesticides, and other chemical products to be used and the planned methods of application and control.
(g) A description of reasonable alternate locations or routes for the land use and why the proposed site was chosen.
(h) A reclamation plan and time schedule which describes procedures for revegetating the affected land, types and locations of plant

encouraged by the proposed change of use, such as off-road vehicle use, excessive noise, soil erosion, air or water pollution and economic factors relating to costs of additional facilities or resource protection measures which may be required in the general area in the future as a result, directly or indirectly, of the proposed change of use.

(2) In accordance with KRS 146.290, a written order shall be issued by the secretary within sixty (60) days following the public hearing. The order shall consist of a permit with appropriate standards attached in accordance with 401 KAR 4:140 if the application is approved, specify objections to the application and procedures for appeal if the permit is denied, or recommend an alternate use consistent with the Kentucky Wild Rivers Act. The order shall set forth the finding of fact and conclusion supporting the ruling. The order shall be forwarded to the applicant by certified mail, return receipt requested.

Section 6. Permit Conditions. (1) A permit to conduct a change of use will contain site-specific restrictions, terms and conditions as are appropriate to protect to the fullest extent possible the wild river area and the public trust therein, within the intent of KRS 146.220.

(2) A permit will become effective on the date of issuance and will remain in effect for one (1) year, at which time the permittee shall notify the cabinet in writing as to the status of the new land use. The permit may be renewed annually upon request by the permittee if the new use has remained consistent with the land use plan submitted and has complied with all permit conditions, the provisions of 401 KAR 4:110 to 4:140 and other applicable laws and regulations.

(3) The landowner to whom a change of use permit is issued shall be held fully accountable for compliance with 401 KAR 4:110 to 4:140 and any additional terms and conditions imposed by the permit.

(4) The permit application and land use plan submitted shall be an instrument for adjudging compliance with the permit. Any changes in the application or land use plan shall require amendment of the permit before such changes are implemented. A permit may be revoked or restricted in the event that the application submitted is found to contain falsified or erroneous information or if conditions of the permit or any of the provisions of 401 KAR 4:110 to 4:140 are violated. Violations shall be subject to penalty as set forth in KRS 146.990.

(5) A change of use permit shall apply to the property for which it was granted and is transferable to any future owner of the property or interest in the property. While the permit is in effect, the permittee shall notify the cabinet of any sale, lease or other transfer of interest in the property to which the change of use applies, and shall make acknowledgment of the permit a condition of the sale, lease or other transfer of interest in the property.

Section 7. Appeal of Secretary's Order. (1) The landowner may file a written objection to the ruling on or before thirty (30) days of the date of its issuance. The written objection shall set forth the basis of the objection and be filed with the Docket Coordinator of the Division of Hearings.

(2) After filing of the written objection, an authorized agent of the secretary shall meet with the landowner and attempt to reach an agreement with respect to a modification of the ruling.

(3) If no agreement is reached within sixty (60) days of filing of the written objection, the secretary shall proceed pursuant to KRS 146.290.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1988 at 7 p.m. in the Ground Floor Auditorium, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Robert W. Ware, Manager, Water Quality Branch, Division of Water, Department for Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sherri Evans (564-3410)

(1) Type and number of entities affected: Generally, the entities to which this regulation apply are persons owning property within a Wild River corridor (the regulated public) who apply for a change of use permit to conduct a land use change on that land. A total of 112 private entities and two state agencies, the Department of Parks and the Kentucky Nature Preserves Commission, have been identified as owning land within one or more wild river corridors. Federal lands are exempted from the wild rivers statutes.

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

1. First year: There is no fee required to apply for a change of use permit, and the applicant is not required to attend or be represented at any public hearing. Indirect costs which may result from project delay during the time it takes to review and process a permit application have been minimized by statutory time constraints on permit issuance (KRS 146.290) and by this regulation, which provides specific directions for completing and filing a permit application in a manner that will facilitate its processing and approval. There should be no significant costs associated with obtaining the information required to complete a permit application, including the land use plan, as the required information is either already required in accordance with other permitting regulations (e.g., mining, oil and gas) or may

be obtained at a minimal cost from appropriate agencies within the cabinet that offer technical expertise and assistance to the public upon request. An exception may be the costs of acquiring engineering services for the design of a recreational facility.

2. Continuing costs or savings: Long-term costs will not increase significantly after the first year.

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

(b) Reporting and paperwork requirements: The permit application form and forms for completing a land use plan are supplied by the cabinet for the applicant's use.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed regulation will have no effect on the operation or costs of the Natural Resources and Environmental Protection Cabinet. The provisions requiring the applicant to submit all of the information needed to evaluate the permit application and issue a recommendation for its approval or denial within the mandated timeframe will save time for cabinet staff processing the application.

2. Continuing costs or savings: None determined

3. Additional factors increasing or decreasing costs: None determined

(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: A no-action alternative was considered and rejected because the adoption of rules or regulations for the preservation and enhancement of the wild rivers is mandated by KRS 146.270. There is a recognized need for consistency of information to be submitted by persons applying for a change of use permit.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes

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

401 KAR 4:140. Wild rivers change of use permit standards.

RELATES TO: KRS 146.220, 146.270, 146.280, 146.290, 146.350, 146.990

PURSUANT TO: KRS 146.270, 224.033, 224.045

NECESSITY AND FUNCTION: KRS 146.270 authorizes the secretary to adopt rules and regulations as necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them. In such administration primary emphasis shall be given to protecting aesthetic, scenic, historic, archaeologic, and scientific features of the area. Under the provisions of KRS 146.290, the select cutting of timber, other resource removal or an agricultural use may be allowed pursuant to regulations promulgated by the secretary upon the granting of a permit under the other provisions of KRS 146.200 to 146.360. KRS 146.290 requires that any permit granted to conduct a change of use shall contain such restrictions, terms and conditions as are appropriate to protect to the fullest extent possible the stream area and the public trust therein within the intent of KRS 146.220. This regulation sets forth minimum performance standards for conducting a land use change in a wild river corridor as necessary to protect the scenic beauty and environmental quality.

Section 1. Applicability. This regulation applies to new land uses, as defined in 401 KAR 4:110, within designated boundaries of a wild river corridor which require a change of use permit from the cabinet.

Section 2. Buffer Zones. (1) Other than as necessary to provide river access sites authorized by the cabinet, a change of land use shall be located outside of buffer zones.

(2) Where the adjacent slope is less than forty (40) percent the minimum width of a buffer zone bordering streams and other surface waters shall be 100 feet as measured laterally from the bank of the stream or other surface water. Where the adjacent slope is forty (40) degrees or greater, the buffer zone width shall vary as follows:

Slope of Land (percent)	Minimum Width of Buffer Zone (feet)
40 to 49	115
50 to 59	125
60 to 69	145
70 to 79	165

(3) The boundaries of a buffer zone shall be flagged by the permittee with durable, brightly-colored material prior to the commencement of a permitted change of use.

Section 3. Extent of Disturbance. A new land use shall occupy the minimum area necessary to accomplish the intended use as specified in an approved land use plan.

Section 4. Water Quality. (1) In accordance with the nondegradation provision for outstanding resource waters contained in 401 KAR 5:029(2)(4), background water quality of surface waters within a wild river corridor shall be maintained or enhanced.

(2) There shall be no new discharge of a substance or combination of substances into a surface water within a wild river corridor.

(3) Water quality data shall be required by the cabinet as necessary to maintain background water quality.

(4) The natural flow of water in wild rivers shall be maintained. Water withdrawals shall require a permit as provided in 401 KAR 4:010 and KRS 151.140, and shall not be allowed to impair existing recreational uses of the river, nor adversely impact endangered or threatened

species.

Section 5. Erosion Control. (1) Best management practices shall be implemented as necessary to control soil erosion and sediment wherever there is ground surface disturbance; sediment shall not be allowed to accumulate in surface waters.

(2) Temporary erosion control measures shall be immediately implemented on all disturbed areas not needed for ongoing operation until permanent control measures can be established, and shall minimally include use of one (1) or more of the following:

(a) All disturbed surfaces shall be graded, seeded, fertilized and mulched to establish complete vegetative ground cover. Native species of grasses and legumes shall be used wherever conditions allow.

(b) Sediment filters, such as straw bales or filter fences, shall be used as necessary to trap sediment within disturbed areas.

(c) On slopes of ten (10) degrees or more, diversion structures shall be installed uphill of disturbed areas to divert surface run-off into vegetated areas.

(3) Vehicular traffic shall be restricted to the access roads and skid trails approved in the land use plan.

(4) Activities involving the use of heavy equipment shall be suspended during wet soil conditions, and heavy equipment shall be stored outside the corridor when not in use.

(5) During construction activities, storage and disposal of unconsolidated materials shall occur only at locations approved in the land use plan, and topsoil removed from the operation site shall be stockpiled and stabilized for use during reclamation.

(6) No stream shall be diverted, obstructed, impounded or otherwise altered to effect a permitted use, and streambed materials shall not be removed from a streambed for any purpose.

Section 6. Stream Crossings. (1) Vehicular stream crossings shall be prohibited where stream bank slopes exceed ten (10) percent, or where the crossing might otherwise have an adverse impact on the stream environment.

(2) Natural drainages which are not composed substantially of rock shall be accommodated with an appropriately sized drainage relief structure, such as a culvert or temporary bridge, at the point of intersection with a road.

(a) Relief structures shall cross the stream at right angles where the stream channel is most narrow and has firm, rocky banks.

(b) Relief structures for crossing a permanent stream shall minimally consist of a closed culvert twenty-four (24) inches or more in diameter, embedded in clean rock fill and covered by compacted fill to a minimum depth of one (1) foot. The bottom of culverts shall be flush with stream substrates.

(3) As required under KRS 151.250, a permit to authorize construction in a floodplain must be obtained from the cabinet prior to bridge construction if the area of the watershed is one (1) square mile or greater.

Section 7. Access Roads. (1) Existing roads shall be used whenever possible to minimize surface disturbance.

(2) Best management practices for road construction, adopted by reference in 401 KAR 5:200, shall be employed to the greatest extent possible during road construction and maintenance.

(3) Roads shall be routed to follow the existing land contour as closely as possible and to avoid surface waters, floodplains and any areas vital to the preservation of significant features. Except for necessary stream crossings or provision of public access to the river, no portion of any road shall be located in a buffer zone or streambed.

(4) Roads shall not exceed a maximum grade of ten (10) percent for distances of more than 150 feet. Portions of roads on grades steeper than ten (10) percent shall be graded and surfaced with stable materials such as limestone rock, crushed gravel or other material approved in the land use plan, and shall be sufficiently durable for the anticipated volume of traffic and the weight, and speed of vehicles to be used. Acid or toxin-forming substances shall not be used for road surfacing.

(5) The width of a road shall be appropriate for the anticipated volume of traffic and the size, weight, and speed of vehicles to be used and shall not exceed sixteen (16) feet for single-lane traffic unless special exemption is made on the application.

(6) Vegetation shall not be cleared from an area greater than the width necessary for road and associated ditch construction. Road shoulders shall be seeded in grass cover immediately after construction is completed, and ditches shall be lined with gravel.

(7) Roads shall be closed to vehicular use by means of a locked gate at the corridor boundary whenever adverse weather or other conditions cause operation and maintenance of the permitted use to be suspended for an extended period of time.

Section 8. Structures. (1) Structures permitted by the management agency shall be located either:

(a) Beyond the limit of the 100-year floodplain as determined by the division; or

(b) No closer than 250 feet from the nearer bank of the wild river.

(2) Structures shall be screened by vegetation or topographic features so as not to be visible from the nearer bank of the wild river.

(3) Any new dock, boat ramp and other river access facility shall be constructed so as to minimize its intrusion into the river, if any, and shall not substantially impede natural stream flow.

(4) Best management practices for construction shall be used as necessary to control erosion and prevent sedimentation of surface waters.

Section 9. Control of Hazardous Substances. (1) To the extent not inconsistent with any other applicable law, any hazardous substance used for or resulting from a new land use shall be confined to the smallest practicable area, shall be stored so as to prevent escape as a result of rain, percolation, high water or other cause, and shall be properly and legally disposed of outside of the wild river corridor.

(2) The operator shall immediately notify the cabinet of any accident involving fire, personal injury, discharge or accidental bypass of any hazardous substance within a wild river corridor, and shall submit a written report to the cabinet within forty-eight (48) hours of an

accident event.

Section 10. Solid Waste Disposal. Scrap and waste materials used to effect a new land use shall be removed and properly disposed of outside of the corridor immediately after their use is concluded.

Section 11. Visibility. Buildings, facilities and other structures shall be made as inconspicuous as possible by painting or staining in muted tones and, or, by screening with native vegetation. Electric lines shall not be strung across a wild river unless no other option is available, and shall be hidden to the extent possible.

Section 12. Cutting of Vegetation. (1) Any tree cutting required for a new land use, other than the permitted select cutting of timber or a new agricultural use, shall be limited to single trees which interfere with the construction or operation of the permitted use, as approved in the land use plan.

(2) Burning of forest vegetation shall be prohibited unless authorized by the Division of Forestry, or the U.S. Forest Service on federal lands, for purposes of disease control or as part of a prescribed burn and shall conform with other applicable provisions of law.

(3) Every effort shall be made to avoid unnecessary removal or trampling of vegetation within a corridor.

Section 13. Operation and Maintenance. All operation and erosion control structures and facilities shall be routinely inspected and maintained by the operator to ensure proper functioning and to prevent the accumulation or accidental discharge of hazardous substances or waste materials.

Section 14. Reclamation. (1) The permittee shall provide written notification to the cabinet immediately upon the conclusion of a new land use and shall begin implementing reclamation measures within thirty (30) days following such notifications.

(2) Reclamation shall involve restoration of all disturbed area to its predisturbance appearance and condition or an improved condition that will enhance natural and aesthetic values.

(3) Reclamation shall be completed within ninety (90) days following conclusion of the new use unless an exception is approved by the cabinet before the ninety (90) day period ends.

(4) All facilities and structures installed for the new use, including temporary erosion control and drainage structures, shall be removed from the corridor, and the natural contours and drainage patterns shall be restored. Culverts and other relief structures may remain if approved by the cabinet to protect the natural and aesthetic values of an area.

(5) Unless otherwise approved in the land use plan, roads constructed for the new use shall be reclaimed by effectively blocking the road entrance to vehicular use, removing water control devices, restoring the ground surface to its natural contours, and seeding, fertilizing and mulching the roadbed. Native species of plants approved in the land use plan shall be used wherever conditions allow, and those having wildlife value will be preferred.

(6) Tree species which existed on the site prior to the land use change shall be planted on all areas cleared of trees during the land use change.

(7) Reclamation shall be considered complete when an inspection by division personnel determines that the affected site resembles, as closely as possible, the condition and appearance of the land and vegetation that existed prior to the land use change.

(8) Failure of the operator to comply with these standards shall be cause for the denial of any future permit to conduct a change of use on land within a wild river corridor involving the operator.

Section 15. Additional Standards Specific to Exploration For and Extraction Of Oil and Gas. (1) A spill prevention and control countermeasure (SPCC) plan shall be prepared in accordance with 40 CFR Part 112 and implemented before drilling begins. The SPCC plan shall contain a contingency plan for reporting and controlling accidental discharges according to 401 KAR 5:015.

(2) The area of disturbance at each well shall not exceed sixty (60) feet by 100 feet unless otherwise approved in the land use plan.

(3) Prior to drilling, an area forty (40) feet in diameter centered around each well shall be isolated by an earthen dike twelve (12) inches or more in height, and the enclosed ground surface shall be lined with three (3) inches or more of sorbent material.

(4) Acids and other well drilling and cleaning fluids shall be handled in accordance with Section 9 of this regulation.

(5) Blowout prevention equipment shall be installed on wells during drilling.

(6) The permittee shall provide written notification to the division of the planned dates for drilling to provide an opportunity for division personnel to be present on-site during drilling activities.

(7) For air rotary or other dry methods of drilling, dust and other particulate matter blown from the well shall be directed away from surface waters and stockpiled in a manner that will prevent its entry into surface waters as a result of rain, percolation, wind or other cause. Dust may be controlled by injecting water into the air stream at a rate of approximately three (3) gallons per minute. Water and other fluids used in the drilling process shall not be discharged into surface waters.

(8) Whenever drilling or production is suspended for twenty-four (24) hours or longer, all valves and blowout prevention equipment shall be closed.

(9) Storage or loadout tanks shall be equipped with an oil brine separator and a safety valve to prevent accidental overflow of oil, and all valves and other fluid controls shall be kept locked or be removed when the operator is off-site to prevent accidents due to vandalism.

(10) No produced water shall be discharged into surface or groundwaters within a wild river corridor.

(11) Storage of produced water within a wild river corridor shall be in a closed tank having a minimum thirty (30) day storage capacity to prevent accidental discharge. Fluids shall be safely removed from the tank when the tank becomes filled to no more than two-thirds (2/3) capacity and be properly disposed of.

(12) Pits constructed to temporarily hold brine or other fluids produced during drilling shall be located beyond flood plains and other areas prone to flooding, and be constructed according to 401 KAR 5:090, Section 9(5)(a).

(13) Disposal of produced water shall be by reinjection into a disposal well in accordance with 401 KAR 5:090, Section 11, and require an underground injection control permit as provided for in 40 CFR 146, or shall be transported outside of the corridor and reinjected into an approved disposal well.

(14) Any pipelines leading from pumps to storage or loadout tanks shall be fitted within a second pipe or within an open culvert lined with nonpermeable material that shall act as a catch basin for any accidental discharge of oil or brine.

(15) Pipelines shall be placed as far away as possible from streams and other surface waters, shall follow an access road wherever possible, and shall not be routed across a wild river.

(16) Facilities, roads, collecting lines and other structures shall be inspected daily by the operator when wells are producing to ensure erosion control and prevent accumulations or leaks of oil, produced water or other hazardous substances.

(17) Spills or leaks of oil, produced water, or drilling or cleaning fluids shall be contained by the operator immediately upon discovery, be disposed of outside of the corridor in an approved manner within twenty-four (24) hours of discovery, and be reported to the cabinet in accordance with 401 KAR 5:015 and 40 CFR Part 110.

(18) The operator shall keep sorbent material, fire extinguishers and other firefighting tools readily accessible on the site to control fire or an accidental discharge of oil or produced water.

(19) Trailers, mobile homes or other temporary or permanent structures used to house operation personnel shall not be installed within a wild river corridor.

(20) Reclamation shall include the plugging of all wells in accordance with oil and gas regulations, and the plugging affidavit shall be submitted to the division.

Section 16. Additional Standards Specific to Underground Mining. (1) No surface disturbance resulting from underground mining shall occur within the buffer zones of streams and other surface waters within a wild river corridor.

(2) Drainage from any surface disturbance resulting from underground mining shall be controlled following the guidelines contained in "Best Management Practices for Surface Coal Mining," published in 1984 and adopted by reference herein. Copies of this document can be obtained from the Division of Water, 18 Reilly Road, Frankfort, Kentucky.

(3) Mine surface entrances shall be located outside a wild river corridor wherever possible.

(4) Underground mining shall not be permitted where subsidence or landslide cannot be adequately controlled. if subsidence or surface displacement of soil, rock or other ground material due to mining activities causes an adverse impact to the river or other surface waters within a wild river corridor, the mining operation shall be suspended until such time as the operator has corrected the damage and provided evidence that further subsidence or landslide shall not occur.

(5) A subsidence event shall be reported to the cabinet within twenty-four (24) hours of discovery, the surface impacts of subsidence shall be corrected and the area restored to its previous condition before mining commences. The disturbed area shall be revegetated, using native grasses and legumes wherever conditions allow, and be thoroughly mulched with straw or other suitable material until a vegetative cover becomes established.

(6) In addition to the standards set forth in this regulation, any roads constructed or improved to effect a mining use shall be in accordance with 405 KAR 18:230, and shall be constructed and maintained using best management practices for mining haul roads. Other transportation systems such as tramways, railroad loops or spurs shall not be allowed within a wild river corridor unless such access would cause less impact on the river environment than any alternative system.

(7) Underground development waste, spoil, coal or other hazardous substances shall be transported to proper storage and disposal areas outside of the wild river corridor, and shall otherwise be handled according to 405 KAR 18:130 and 405 KAR 18:190. No tipples, processing or refuse areas shall be located within a wild river corridor.

(8) Mine shafts at depths of less than 400 feet shall not be routed beneath streams and other surface waters in order to avoid subsidence and physical damage to natural surface drainage patterns.

Section 17. Additional Standards Specific to the Selective Cutting of Timber. (1) Timber cutting shall follow to the fullest extent possible the guidelines contained in "Forest Practices Guidelines for Water Quality Management," published July 1980 and adopted by reference herein. Copies of this document can be obtained from the Division of Water, 18 Reilly Road, Frankfort, Kentucky.

(2) A professional forester shall survey and mark all trees to be cut. A minimum residual basal area of not less than sixty (60) square feet per acre shall be left standing and evenly distributed over the harvested area.

(3) The boundaries of the area to be cut shall be clearly marked using paint.

(4) Prior to cutting, all active den trees and at least three (3) mast-producing trees per acre consisting of trees in the largest size class in the stand, shall be marked and left standing.

(5) Tree cutting shall not be repeated in the permitted area at intervals of less than twenty (20) years from the date that reclamation is completed as specified in Section 14(7) of this regulation, unless the landowner has submitted a timber management plan as part of the land use plan, approved by a professional forester, which recommends a shorter interval.

(6) The selective cutting of trees shall be prohibited within buffer zones except to remove diseased or insect-infested trees or those becoming uprooted due to natural causes.

(7) Construction of roads and skid trails shall occur outside of buffer zones, unless less impact would result from using an old road in a buffer zone and be routed to follow the contours of the land.

(8) Trees used for fastening or attaching cables, guys or other equipment shall be

adequately protected from possibly injury.

(9) In hilly terrain, logs shall be skidded uphill where possible only, on trails designed and maintained for this purpose using best management practices, and shall not be skidded through surface waters.

(10) The amount of surface disturbance required for construction of roads, skid trails and log landings shall be kept to the minimum required for such purposes, and the area of a landing shall not exceed 6,000 feet unless and exception is approved in the land use plan.

(11) Log landings shall be located so as to minimize erosion and wherever possible be located on well-drained sites on slopes of less than ten (10) percent. Where necessary, a landing shall be protected from overland flow of water by construction of a diversion ditch on the uphill side to divert water into well-vegetated areas.

(12) Timber shall be cut as close to the ground as is reasonably practicable, with the height of the stumps not to exceed twelve (12) inches above ground on the uphill side of the tree.

(13) Trees shall be cut so as to fall away from streams and other surface waters, rock houses, historic structures and other sensitive areas identified by the division.

(14) Tree tops and other nonmarketable timber slash shall be lopped to within two (2) feet of the ground surface, or chipped and spread on disturbed areas to control erosion. Slash shall not be piled within a corridor.

(15) Pesticides and herbicides shall be used in accordance with the land use plan submitted as part of the permit application.

(16) Facilities for processing logs shall be located outside wild river corridor boundaries.

(17) Logging operations shall cease during wet soil conditions.

(18) At the conclusion of the land use change, log landings, skid trails and haul roads shall be reclaimed according to Section 14 of this regulation.

(19) A permit to conduct select cutting of timber shall not be extended more than 180 days beyond the original permit expiration date.

Section 18. Additional Standards Specific to Agriculture. (1) A new agricultural use within a wild river corridor shall follow to the fullest extent possible the guidelines contained in "Best Management Practices for Agriculture," published July 1985 and adopted by reference herein. Copies of this document can be obtained from the Division of Water, 18 Reilly Road, Frankfort, Kentucky.

(2) The removal of trees to effect a new agricultural use shall be subject to all applicable provisions of Section 17 of this regulation.

(3) Where little or no vegetative ground cover exists between the proposed agricultural use and a stream or wetland, native trees and ground cover shall be planted along the banks of the surface water to create buffer zones prior to the commencement of the agricultural use. Plant species will be recommended by the division.

(4) Severely eroded, sediment-producing areas shall be properly stabilized using best management practices for critical areas prior to the commencement of a new agricultural use in an area.

(5) Conservation tillage methods shall be employed to the extent practicable on lands having slopes of ten (10) degrees or greater.

(6) A cover crop shall be planted in cultivated fields during winter and other periods when the cultivated crop does not provide adequate ground cover.

(7) Livestock shall be excluded from buffer zones by fencing or other methods.

(8) Watering areas for livestock shall be located outside of buffer zones.

(9) The number of livestock per area of pasture shall be estimated in the land use plan and shall be maintained at or below the level necessary to sustain complete ground cover.

(10) Animal wastes shall be properly stored and disposed of in a manner that will prevent their introduction into streams. Spreading of waste over fields as a disposal method shall be avoided during periods of heavy rainfall or frozen soil conditions.

(11) Any pond constructed to hold animal waste shall be located as far away as possible from streams and other surface waters, and be designed to hold the run-off from a twenty-five (25) year, twenty-four (24) hour storm event plus six (6) months of precipitation.

(12) A perennial cover crop shall be planted between trees in orchards and nurseries immediately after the nursery stock is planted.

(13) The use of pesticides and herbicides shall be restricted to those approved in the land use plan, and the use of a persistent, toxic substance shall not be approved if an equally effective, less toxic and less persistent product is available.

(14) Aerial spraying of chemicals shall not be allowed within a wild river corridor.

(15) The cabinet may attach additional standards to a permit authorizing an agricultural use on highly erodible lands.

Section 19. Additional Standards for Recreation Facilities Development. Development of commercial or private recreational facilities within a wild river corridor shall be consistent with wild river management plans, and buildings and other structures shall be located outside of buffer zones wherever possible.

(2) Recreation facilities shall be primitive in design and appearance and constructed of natural or natural-appearing materials that blend with the surroundings.

(3) Recreation facilities shall be designed so as to require minimal ground disturbance and removal of vegetation.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1988 at 7 p.m. in the Ground Floor Auditorium, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing or in submitting written comments shall notify this agency in writing by August 21, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you

do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Robert W. Ware, Manager, Water Quality Branch, Division of Water, Department for Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sherri Evans

(1) Type and number of entities affected: Generally, the entities affected by this regulation are property owners who obtain a change of use permit to conduct a new land use within a wild river corridor, including a resource removal, selective timber cut, new agricultural use, or development of a recreation facility, and the leasee or operator of the permitted land use. In addition, outdoor recreationists, scientists, educators and the general public will be indirectly affected by this regulation. The regulatory impact analysis prepared for 401 KAR 4:120 provides details on the numbers of these entities. It is not possible to estimate the number of leasees or operators that may be affected by this regulation, but the number is anticipated to be small based on past permitting activity. During the 14 years that a wild rivers permit has been required, only 4 permits have been applied for and issued, and these involved logging and oil and gas development.

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

1. First year:

General

A landowner is required to obtain a change of use permit before conducting a land use change on property within a wild river corridor. Generally, the proposed regulation establishes minimum performance standards for conducting a change of land use in a manner that will protect, to the fullest extent possible, outstanding or unique aesthetic, natural, scientific and cultural resources. Costs for compliance with this regulation are borne by the permit holder.

Affected entities are likely to derive benefits from this regulation. Landowners will receive long-term benefits from sustained land and resource productivity. Recreationists, scientists and educators, downstream landowners and water users and the general public will benefit from standards designed to protect water quality, aesthetics, the primitive character, aquatic life and other outstanding resources. Recreationists will benefit from the provisions that assure present and future opportunities for healthful outdoor experiences on the primitive end of the recreation spectrum, particularly those that involve primary and secondary contact recreation. Resource protection provisions will benefit scientific researchers by providing continued opportunity for the study of relatively undisturbed archeological and ecological conditions and endangered and threatened species. Such provisions benefit the general public by preserving biological diversity as well as outstanding examples of their natural and cultural heritage for present and future generations to enjoy.

Establishment of buffer zones along the banks of wild rivers may be the single most important provision for protecting water quality from nonpoint sources of pollution, as well as protecting aquatic life and the aesthetics of the river environment. Buffer zones have been found to be important in protecting the integrity of a natural stream, including preventing slash from logging from entering the water, control of channel stability and water temperature, and preservation of diverse riparian wildlife habitats and the aesthetic value of stream environments[1]. They are also effective in preventing sediment, nutrients and other toxic chemicals in surface run-off from impacting surface waters. Increasing the buffer width as the degree of slope increases follows recommendations of the Silviculture Nonpoint Source Task Force[2] for filter strips intended to minimize impacts on water quality resulting from silviculture activities.

The amount of land area retained as undisturbed buffers amounts to approximately 1,570 acres, excluding lands in the Big South Fork National River and Recreation Area and Mammoth Cave National Park. About 50 percent of the 1,570 acres, or 725 acres, is in private and state ownership. A considerable portion of this land is highly flood-prone or very steep and not suitable for land uses other than forestry. The costs, if any, born by a landowner for maintaining buffer zones in an undisturbed condition will be minimal.

The erosion control provisions of this regulation stress stabilization of soil during all phases of construction and operation through the use of vegetative cover, simple erosion control structures, proper road design and maintenance and timing of soil-disturbing activities so as to avoid wet soil conditions. Costs for planting and fertilizing to replace cleared vegetation are minimal. Erosion control for projects where considerable excavation or other surface disturbance is involved may require use of special equipment. In most cases, such equipment is necessary to conduct the land-use operation. Sediment from surface disturbances and poorly designed roads used for agriculture, mining, silviculture and general construction have been identified as the principal nonpoint source pollutant in Kentucky in terms of volume[3]. Standards for routing and construction of access roads will minimize erosion and stream sedimentation problems as well as reduce future costs for road maintenance. The major costs associated with using best management practices for control of soil erosion may include engineering services, road surfacing, erosion control materials and bulldozer use. Other costs for compliance with the performance standards of this regulation will depend on the particular type of land use being conducted. These are addressed below.

Oil and Gas Production

Added costs for oil and gas production will depend largely on the existing equipment inventory of the driller, operator or leasee. Special equipment required for this land use is used routinely by many operators, and includes: (1) blowout prevention equipment on the drilling rig; (2) an oil brine separator on storage or loadout tanks, if brine is produced; and (3) a storage tank for holding produced water or brine, if water is produced. Miscellaneous

materials that may be required include sorbent materials, firefighting equipment and extra lengths of pipeline.

Underground Mining

Principal threats to the stream environment imposed by an underground coal mining operation involve the amount of surface disturbance (and thus potential for stream sedimentation), and the formation and discharge of acid water, which often contains high concentrations of heavy metals. While underground mining may involve disturbance of a relatively small amount of land surface, subsidence of land can significantly increase the amount of surface disturbance involved and ultimately alter the surface hydrology of an area. Because subsidence may be predictable, if not always controllable, the standards for this land use focus on prevention and restoration of subsidence events. Principal costs for compliance with this regulation involve careful study and planning prior to commencement of the mining operation to avoid subsidence of lands within a wild river corridor. While the extraction of coal may be the most economically beneficial use of the land, long-term storage and processing of coal and coal products within a wild river corridor is prohibited by this regulation, for both aesthetic and environmental reasons. This may result in added costs to use in alternate site for storing and processing the extracted product.

Selective Timber Removal

Standards for selective cutting of timber are designed to sustain production of a quality stand of timber for future commercial benefit while protecting aesthetic and wildlife values afforded by partial forest cover. The costs of compliance with these standards will be minimal, as they emphasize giving consideration to the location and design of haul roads, skid trails and log landing areas in a manner that will minimize soil erosion. Use of best management practices in all phases of the land use change will prevent loss of fertile topsoil and soil compaction, as well as protect the integrity and water quality of adjacent public waterways. Costs may be incurred for time required to dispose of timber slash or for the use of chipping equipment. Short-term profits from commercial cuttings may be reduced by retention of a number of merchantable-size trees for aesthetic and wildlife purposes, while long-term benefits of soil stability and productivity may be realized by the landowner. Retention of cavity and mast-producing trees will help perpetuate wildlife populations, including species desired for sport and game.

Agriculture

Standards for conducting a new agricultural use conform closely with widely accepted conservation practices currently promoted by soil conservation agencies, and mandated in many cases by the Food Security Act of 1985 (Farm Bill). They emphasize the use of best management practices to prevent soil erosion and run-off of sediment, nutrients and agricultural chemicals to surface waters. The standards involving conservation tillage and maintenance of a cover crop have been found to accrue long-term benefits to farmers. The major costs that may be incurred involve fencing of buffer zones to exclude livestock, provision of an alternate water supply for livestock, and proper storage of animal wastes to prevent their entry into surface waters. Costs to stabilize severely eroded areas prior to putting the land into agriculture may incur costs in the short-run but will accrue substantial benefits in terms of long-term soil stability and productivity. Some share of soil erosion control costs may be mitigated by cost-sharing available through federal and/or state soil conservation agencies.

Recreation Facilities Development

Standards for development of recreation facilities within a wild river corridor emphasize locating and designing the facilities in a manner that will maintain the aesthetics of the stream environment and prevent adverse impacts on riverbanks and water quality. No costs for compliance were determined. It is the cabinet's desire to improve opportunities for water-based recreation and to encourage private enterprises to provide facilities for public use and enjoyment of the wild rivers that are consistent with the purpose and intent of KRS 146.200 to 146.360.

2. Continuing costs or savings: Long-term costs are expected to increase proportionately with inflation. Benefits to landowners, recreationists, scientific and educational users and the general public will likely increase over time as opportunities for enjoying the aesthetic, natural, cultural, scientific and recreational values of unregulated streams decrease as a result of uncontrolled streambank development and nonpoint source water pollution. Past user data indicate that demand for outdoor recreation will continue to increase while opportunities for primitive recreational experiences will continue to decline on streams outside of the wild rivers system. Use of best management practices for conducting permitted land-use activities will protect soil fertility and productivity, resulting in long-term benefits to landowners. The maintenance of good water quality for primary and secondary contact recreation and aesthetics will provide continuous benefits to the general public and to local economies that derive economic benefits from the tourism trade. Perpetuation of the native aquatic fauna and flora of these streams, including endangered and threatened species, some of which are threatened with global extinction, will benefit the scientific community and the citizens of the Commonwealth and of the nation.

Minimal data are available concerning economic benefits of sport fisheries and other resources that support recreational uses of natural streams. An in-depth study of the Rockcastle River[4] provides some insight into the beneficial economic impacts of stream recreation. This study, based on an on-site survey of river users, found an annual use of the river by 36,547 persons who spent $1,616,095.60 in pursuit of their recreational activities. An estimate of person-hours spent in certain recreational activities included 104,487 for camping; 87,468 for fishing; 47,148 for deer-hunting; 7,679 for canoeing; and over 29,000 in other activities. Further, estimates of potential user rates, based on known use and resource availability for hunting, fishing, canoeing, camping, picnicking, swimming and hiking amounted to 575,679 user days. Although the study area included a few miles of stream in

addition to the wild river segment, these data provide a basis for estimating the economic benefits provided by the wild rivers. It should be noted that the Rockcastle is one of the least accessible streams in the wild rivers system and that streams having easy public access along a greater portion of their length will likely have greater user rates for a variety of recreational activities.

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

(b) Reporting and paperwork requirements: Costs for compliance with reporting and paperwork requirements will be minimal.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation will have no direct effect on the operation or costs of the NREPC. The Cabinet has already internalized associated costs within normal budget appropriations. The provisions of this regulation follow cabinet policies and procedures established to carry out the mandates of the wild rivers statutes and do not change the basis for routine procedures involving permitting, compliance monitoring or enforcement.

2. Continuing costs or savings: A future increase in permit activity is predicted as the supply of natural resources such as timber decreases and demand increases. A significant increase in the number of permits issued will require additional personnel for permit review and compliance monitoring, but even more personnel would be required if there were not standards for landowners to follow.

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

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: This regulation is not anticipated to result in any significant impact on state or local revenues. For additional analysis, refer to the regulatory impact analysis prepared for 401 KAR 4:120.

(4) Assessment of alternative methods; reasons why alternatives were rejected: A no-action alternative was rejected because the adoption of rules or regulations for the protection and enhancement of designated wild rivers is mandated by KRS 146.270. The proposed regulation represents the cabinet's best determination of standards necessary to protect the aesthetics and environmental quality of the stream environment and the public trust therein, while permitting landowners to derive economic benefits from reasonable use of the land consistent with the purpose and intent of the wild rivers statutes as set forth in KRS 146.220

The standards proposed in this regulation were selected for their cost effectiveness as well as their functional capacity to achieve the goal of protecting the public trust in preserving the wild rivers. The standards are based on available scientific literature and consultation with professional biologists, foresters, and state personnel involved in regulating nonrenewable resources development. Regulations developed for wild and scenic river programs in other states were reviewed and adapted for use in Kentucky where appropriate.

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

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

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

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

TIERING: Was tiering applied? Yes.

FOOTNOTES:

1 Ernan, D.C., J.D. Newbold and K.B. Roby. 1977. Evaluation of streamside bufferstrips for protecting aquatic organisms. California Water Resources Center, Contribution No. 165.

2 Kentucky Natural Resources and Environmental Protection Cabinet. 1980. Kentucky Forestry Practices Guidelines for Water Quality Management.

3 Kentucky Natural Resources and Environmental Protection Cabinet. 1986. Kentucky Report to Congress on Water Quality.

4 Kentucky Department of Fish and Wildlife Resources. 1974. An inventory of recreational use and determination of the recreational potential of selected Kentucky water courses and associated wildlife habitats. P-R Project W-45.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management

401 KAR 39:110. Marketer and burner registration fees.

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033, 224.871

NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes annual fees for the registration of marketers and burners of hazardous waste fuel or used oil burned for energy recovery.

Section 1. Applicability. This regulation applies to marketers or burners of hazardous waste fuel or used oil burned for energy recovery in accordance with the criteria established in 401 KAR 36:040 and 401 KAR 36:050.

Section 2. Annual Registration and Schedule of Fees. Marketers and burners of hazardous waste fuel or used oil burned for energy recovery shall register annually with the cabinet. The fee to register as a marketer or blender is $300.

Section 3. Submittal of Fees. The required fees shall be submitted to the cabinet with the registration form. All checks shall be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1988 at 1 p.m. local prevailing time in the Auditorium of the New State Office Building at Clinton and High Streets in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted to the address below. Written comments will be accepted until the end of the comment period, which will be the close of business on August 24, 1988. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: This regulation affects 50 marketeers and burners of hazardous waste fuel or oil burned for energy recovery in the state which have notified the cabinet.

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

1. First year: There will be a direct cost of $300 per hazardous waste marketer or burner for their initial registration.

2. Continuing costs or savings: The registration is an annual registration. The fee is $300.

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

(b) Reporting and paperwork requirements: Marketers and burners will be required to fill out a registration form and submit it to the cabinet.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The $300 registration fee will cover the cost of reviewing and processing the registration and therefore, the cabinet should not incur any additional costs.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: Fees collected from this regulation will increase the state revenues. There will be no effect on local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) $300 registration fee. Alternative: 1. Less stringent: If Kentucky had chosen to charge less for the review of the registration application, the fee would not cover the cost of the review.

2. More stringent: It was unnecessary for Kentucky to charge more for review because $300 will cover the review expense.

3. Present proposal: The present fee of $300 was chosen because it fairly represents the review costs. KRS 224.871 requires the cabinet to promulgate fee regulations equaling the cost of review.

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

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

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

(6) Any additional information or comments: The registration fees are based on the cabinet's expense for reviewing and processing marketer and burner registrations. These expenses include personnel time and the additional resources necessary to process the registrations.

TIERING: Was tiering applied? No. This regulation does not tier the fees for marketers and burners of hazardous waste fuel and used oil burned for energy recovery. Marketers and burners constitute one class of entity involved in hazardous waste activity.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate) This proposed regulation requires marketers and burners of hazardous waste fuel or used oil burned for energy recovery to register annually with the cabinet and submit a $300 registration fee. Fees are not assessed under the federal regulatory system, thus there is no comparable mandate suggested or contained in the federal regulations with regard to registration fees. KRS 224.871 provides that the cabinet shall establish fees for the processing, review and issuance of certificates and permits.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) No. This proposed regulation imposes requirements which are not contained in the federal regulations. The federal regulations do not contain a fee schedule for marketers and burners of hazardous waste fuel or used oil burned for energy recovery. KRS 224.871 provides the authority for the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The annual registration of marketers and burners will provide the cabinet with more accurate information on this portion of the regulated community. This information may be used when notice of regulatory amendments is given or when correspondence on annual reports is distributed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management

401 KAR 39:120. Part A application fee.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871, 224.994
PURSUANT TO: KRS Chapter 13A, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the Natural Resources and Environmental Protection Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for submitting Part A of the application for storage, treatment or disposal facility permits.

Section 1. Applicability. This regulation applies to all treatment, storage, or disposal facilities required by Section 2(1) of 401 KAR 38:070 to submit Part A of the application for a hazardous waste site or facility permit.

Section 2. Filing Fees. Any owner or operator who submits a part A application for a treatment, storage, or disposal facility shall submit with the application a filing fee in the amount of $1,000.

Section 3. Review Fees. (1) Any owner or operator who submits a closure plan for a treatment, storage, or disposal facility shall submit with the application the following fees:
(a) A closure plan fee of $3,600;
(b) A RCRA facility assessment fee of $11,500; and
(c) A review fee for each type of hazardous waste management unit being closed. The fee for incinerators shall be submitted one (1) time for each different type of incinerator. The fees shall be:
1. Incinerator - $2,000;
2. Waste piles - $1,000;
3. Surface impoundments - $1,500;
4. Tanks - $1,000;
5. Containers - $600;
6. Land treatment - $2,000; and
7. Landfill - $2,000.
(2) Any owner or operator who is required to submit to the cabinet a RCRA facility investigation plan or a corrective action plan shall submit with the plans the applicable review fee. These fees shall be:
(a) RCRA facility investigation plan - $14,500; and
(b) Corrective action plan - $29,000.

Section 4. Submittal of Fees. (1) Fees shall not be refunded if an application is withdrawn.
(2) All checks or money orders shall be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1988 at 1 p.m. local prevailing time in the Auditorium of the New State Office Building at Clinton and High Streets in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted to the address below. Written comments will be accepted until the end of the comment period, which will be the close of business on August 24, 1988. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director
(1) Type and number of entities affected: This regulation affects hazardous waste treatment, storage or disposal facilities in Kentucky. There are currently 73 treatment, storage, or disposal facilities in Kentucky. The fee will vary at each facility depending on the combination of hazardous waste management units present.
(a) Direct and indirect costs or savings to those affected:
1. First year: The cost to the facilities will vary depending on the type of facility. Most facilities, especially the larger facilities, will find it more expensive to submit a part A application.
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: This regulation should result in a savings to the cabinet. The proposed Part A application fees would recover the expense of reviewing the permit application. Thus, the cabinet would not be required to absorb the expense of reviewing the application.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: There will be a direct effect on state revenues from promulgation of this regulation. The fees obtained through this regulation will increase the state revenues. There will be no effect on local revenues from promulgation of this regulation.
(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) Part A application fees. The dollar amounts of the part A application fees are based on the cabinet's expense for reviewing the permit application. To charge less would cause the cabinet to absorb

the expense of each permit issued. KRS 224.871 requires the cabinet to promulgate regulations to recover the cost of review and issuance of permits.

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

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

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

(6) Any additional information or comments: The data on which the fees in this regulation are based were derived from personnel time and resources needed to review these permits.

TIERING: Was tiering applied? Yes. This regulation is tiered to apply to varying types of hazardous waste treatment, storage or disposal facilities.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate) The part A permit application fee for treatment, storage, or disposal facilities established in this regulation is not based on provisions contained in the federal mandate. Fees are not assessed under the federal regulatory system, thus there is no comparable mandate suggested or contained in the federal regulations with regard to permit fees. KRS 224.871 authorizes the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) No. The proposed regulation imposes requirements which are not contained in the federal mandate. Part A permit application fees are not assessed in the federal regulations. KRS 224.871 provides the authority for the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste certificates and permits.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The fees in this regulation are assessed to defray the costs associated with the review of Part A of the application for treatment, storage, and disposal facility permits.

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:010. Definitions.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth definitions.

Section 1. Definitions. (1) "Juvenile holding facility" means county facility and correctional or detention facilities, including correctional facilities defined in KRS 600.020, operated by and under the supervision of any county, regional facility authority, city or urban county government.

(2) "Jailer" means the duly elected or appointed official charged with the responsibility of administering the facility and juvenile holding facility.

(3) "Facility staff" means staff certified by the Justice Cabinet who are involved in the supervision, custody, care or treatment of juveniles in the facility.

(4) "Juvenile" means any person under the age of eighteen (18) years confined in the facility pursuant to KRS Chapter 600.

(5) "Cabinet" means the Corrections Cabinet.

(6) "Medical authority" means the person or persons licensed and certified to provide medical care to juveniles in the facility.

(7) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(8) "Juvenile living area" means a group of rooms or cells which provide housing for the juvenile population.

(9) "Holding area" means an area used to hold one (1) or more juveniles temporarily while awaiting processing, booking, court appearance, discharge or until they can be moved to general housing areas.

(10) "Dormitory" is an area equipped for housing not less than three (3) juveniles or more than fifteen (15) juveniles.

(11) "Dayroom" means a secure area with controlled access from the juvenile living area, to which juveniles may be admitted for daytime activities such as dining, bathing, and selected recreation or exercise.

(12) "Safety vestibule" is a defined space that promotes security by the use of two (2) or more doors and can be used to observe those who pass. When the vestibule is used at a cell area at least the inner door shall be remotely operated. When the vestibule is used for outside entrance at least the outer entry door shall be remotely operated.

(13) "Sallyport" is a vehicular drive-in made secure by electrically or manually operated doors for entrance and exit. It is generally located in close proximity to the facility intake area.

(14) "Penal type" means furnishings approved by the Corrections Cabinet.

(15) "Volunteers" means persons who donate their time and effort to enhance the activities of the program. They are selected on the basis of their skills or personal qualities to provide services in recreation, counseling, education, religious activities, etc.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 17, 1988
FILED WITH LRC: June 17, 1988 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1988 at 10 a.m. at the State Office Building, 10th Floor Conference Room. Individuals interested in attending this hearing shall notify this agency in writing by August 24, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends

will be given and opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Cheryl Roberts/Doug Sapp, Community Services & Facilities, 514 State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Doug Sapp/Cheryl Roberts
(1) Type and number of entities affected: This regulation is expected to affect less than 20 county jails which have separate sections to hold juveniles on a long-term basis.
(a) Direct and indirect costs or savings to those affected:
1. First year: The definitions have no effect on costs.
2. Continuing costs or savings: The definitions have no effect on costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: The definitions have no effect on requirements.
(2) Effects on the promulgating administrative body: The definitions have no effect on body.
(a) Direct and indirect costs or savings: There are no costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: There are no additional factors.
(b) Reporting and paperwork requirements: The definitions do not effect reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: If a jail is capable of becoming a juvenile holding facility, the county may be able to contract with other counties for some juvenile beds therefore creating a new source of revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The definitions reflect accepted correctional practices.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict. Some of these regulations duplicate minimum jail standards which affect the adult section of the jail.
(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. For constitutional purposes, juveniles detained in facilities must receive equal protection.

FISCAL NOTE ON LOCAL GOVERNMENT

Agency Contact: Doug Sapp/Cheryl Roberts
1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes_X_ No___
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect only the county jail. Only counties which have separate sections of jails to hold juveniles will be affected by this regulation.
3. State the aspect or service of local government to which this administrative regulation relates. See #2.
4. How does this administrative regulation affect the local government or any service it provides? Counties whose jails meet this regulation will be able to hold juveniles on a long-term basis. Counties which cannot meet these regulations will have to continue contracting with other counties for the housing of juveniles.

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:020. Administration; management.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures to be followed for the administration and management of facilities.

Section 1. Policy and Procedure - Organization. (1) The jailer shall develop and maintain an organizational chart and an operations manual of policy and procedure which has been adopted by the fiscal court and filed with the Corrections Cabinet.
(2) The written policy and procedures manual shall be made available to employees.
(3) The operations manual shall include but not be limited to the following aspects of the facility's operation:
(a) Administration.
(b) Fiscal management.
(c) Personnel.
(d) Security and control.
(e) Sanitation and hygiene.
(f) Medical services.
(g) Food services.
(h) Emergency and safety procedures.
(i) Classification.
(j) Juvenile programs.
(k) Juvenile services.
(l) Admission and release.
(m) Rules and discipline.
(n) Volunteers.
(4) The operations manual shall be reviewed and updated at least annually. All revisions shall be marked with the effective date and filed with the Corrections Cabinet.

Section 2. Legal Assistance. (1) The jailer shall be represented and advised by the county attorney as provided in KRS 69.210.
(2) The county attorney shall advise the fiscal court in writing when legal representation or legal advisement to the jailer by that office is inappropriate or creates a conflict of interest. The fiscal court shall provide funds for adequate legal representation for the jailer when the jailer has acted within his official capacity and is involved in civil or criminal litigation as a result. The fiscal

court shall be encouraged to carry liability insurance for the facility staff and other county officials.

Section 3. Public Information. (1) The jailer shall develop and implement a procedure for the dissemination of information about the facility to the public, to government agencies, and to the media. The public and juveniles shall have access to the procedures.

(2) Representatives of the media shall have access to the facility, consistent with the preservation of juvenile's privacy and the maintenance of order and security in the facility.

(3) All official statements to the news media, relating to facility administration policy, shall be made by the jailer only or his designee.

(a) Governmental agencies shall be provided with information pertinent only to their specific function and with the consent of the juvenile; and

(b) Private citizens shall only be provided with information supplied to the media.

(4) No information shall be released that is detrimental to another juvenile.

Section 4. Information Systems. The jailer shall establish and maintain an information system which shall comply with the requirements of this section.

(1) Facility information and juvenile records shall be retained in written form or within computer records.

(2) Facility information and juvenile records shall be stored in a secure manner so that they are protected from theft, tampering, and destruction. Written guidelines shall specify the length of time a juvenile record shall be maintained after an juvenile's release from custody and the conditions under which archives are maintained.

(3) A written report shall be made of all extraordinary or unusual occurrences within forty-eight (48) hours of the occurrence. This report shall be placed in the facility record. Extraordinary or unusual occurrences shall include but not be limited to:

(a) Death of an juvenile.

(b) Attempted suicide or suicide.

(c) Serious injury, whether accidental or self-inflicted.

(d) Attempted escape or escape from confinement.

(e) Fire.

(f) Riot.

(g) Battery, whether by a staff member or juvenile.

(h) Sexual assaults.

(i) Occurrence of contagious or infectious disease, or illness within the facility.

(j) Violent acts or behavior by either mental inquest detainees held under KRS Chapter 645 or juveniles known to be or suspected to be mentally ill or mentally retarded.

(4) All facilities shall keep a log of daily activity within the facility.

(5) Each facility shall maintain records on the types and hours of training completed by each employee and shall include verification of Justice Cabinet certification. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.

Section 5. Juvenile Records. (1) The information required by 501 KAR 9:120 for admission and release shall be retained for each juvenile. Other information related in each juvenile's facility record shall include but not be limited to:

(a) Court orders.

(b) Personal property receipts.

(c) Infraction reports.

(d) Reports of disciplinary actions.

(e) Program involvement.

(f) Probation officer or case worker assigned.

(g) Unusual occurrences and in the case of death of a juvenile, disposition of the juvenile's property and remains.

(2) Medical records shall be maintained as required by 501 KAR 9:090.

(3) The jailer shall ensure that juvenile records are safeguarded in accordance with relevant federal and state laws and regulations.

(4) The jailer shall require that juveniles sign a "Release of Information Consent Form" prior to the release of information to individuals other than law enforcement or court officials. A copy of the signed consent form shall be maintained in the juvenile's record. This form shall include but not be limited to:

(a) Name of person, agency or organization requesting information.

(b) Name of facility releasing information.

(c) Specific information to be disclosed.

(d) Purpose of the information.

(e) Date consent form is signed.

(f) Signature of juvenile.

(g) Signature of employee witnessing the juvenile's signature.

(5) Juvenile facility records shall be kept separate from adult facility records and shall be made available for examination only as provided in KRS 610.330. Upon an order of expungement, the jailer shall seal the records and the juvenile's detention shall be deemed never to have occurred.

(6) All facility records maintained on mental inquest detainees held under KRS Chapter 600 shall be kept separate from any other facility records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 202A.091. Upon an order of expungement pursuant to KRS 202A.091(2), the jailer shall seal the records and the mental inquest detainee's stay in the facility shall be deemed never to have occurred.

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: June 17, 1988

FILED WITH LRC: June 17, 1988 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1988 at 10 a.m. at the State Office Building, 10th Floor Conference Room. Individuals interested in attending this hearing shall notify this agency in writing by August 24, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given and opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written

notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Cheryl Roberts/Doug Sapp, Community Services & Facilities, 514 State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Doug Sapp/Cheryl Roberts
(1) Type and number of entities affected: This regulation is expected to affect less than 20 county jails which have separate sections to hold juveniles on a long-term basis.
(a) Direct and indirect costs or savings to those affected: There should be no costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: This regulation will require some jails to amend their current policy and procedure manual to reflect the housing of juveniles. Also, separate files will need to be established for juveniles.
(2) Effects on the promulgating administrative body: This regulation will have no effect.
(a) Direct and indirect costs or savings: There are no costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: There are no other factors.
(b) Reporting and paperwork requirements: There will be no increase in requirements.
(3) Assessment of anticipated effect on state and local revenues: This regulation will not affect revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation reflects statutory requirements and accepted correctional practices.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict. Some of these regulations duplicate minimum jail standards which affect the adult section of the jail.
(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. For constitutional purposes, juveniles detained in facilities must receive equal protection.

FISCAL NOTE ON LOCAL GOVERNMENT

Agency Contact: Doug Sapp/Cheryl Roberts
1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes_X_ No___
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect only the county jail. Only counties which have separate sections of jails to hold juveniles will be affected by this regulation.
3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the policies and procedures of jails which will hold juvenile on a long-term basis.
4. How does this administrative regulation affect the local government or any service it provides? Counties who become juvenile holding facilities will have to amend the jail's policy and procedure manual to reflect that juveniles are being held.

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:030. Fiscal management.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth physical management procedures to be followed in facilities.

Section 1. Budgeting. (1) The jailer, county judge/executive and treasurer shall prepare and present a line item budget request to the fiscal court in accordance with KRS 441.215.
(2) The jailer shall use the format for budget development on forms prepared by the State and Local Finance Office.
(3) The State and Local Finance Office shall submit budget forms to the jailer by March 1 of each year.

Section 2. Accounting. (1) The county treasurer shall maintain fiscal records which clearly indicate the local cost for operating the facility in accordance with KRS 441.235 and 68.020.
(2) Fiscal records shall have an itemized breakdown of the total operating expenses including but not limited to wages, salaries, food and operating supplies.

Section 3. Canteen. As provided in KRS 441.135, each jailer may establish a canteen to provide juveniles with approved items not supplied by the facility.

Section 4. Audits. The county facility budget shall be audited in accordance with KRS 43.070.

Section 5. Payroll. Facility employees shall be paid on the same dates as county employees.

Section 6. Inventory. Each jailer shall implement and utilize the established inventory procedure of the county.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 17, 1988
FILED WITH LRC: June 17, 1988 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1988 at 10 a.m. at the State Office Building, 10th Floor Conference Room. Individuals interested in attending this hearing shall notify this agency in writing by August 24, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing

is open to the public. Any person who attends will be given and opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Cheryl Roberts/Doug Sapp, Community Services & Facilities, 514 State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Doug Sapp/Cheryl Roberts
(1) Type and number of entities affected: This regulation is expected to affect less than 20 county jails which have separate sections to hold juveniles on a long-term basis.
(a) Direct and indirect costs or savings to those affected: This regulation will not result in any savings or costs.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no other factors.
(b) Reporting and paperwork requirements: This regulation relates to budget procedures already followed by county governments.
(2) Effects on the promulgating administrative body: There are no effects.
(a) Direct and indirect costs or savings: This regulation will not result in any savings or costs.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: There are no other factors.
(b) Reporting and paperwork requirements: There are no requirements.
(3) Assessment of anticipated effect on state and local revenues: This regulation will not affect revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation reflects statutory requirements and accepted correctional practices.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict. Some of these regulations duplicate minimum jail standards which affect the adult section of the jail.
(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. For constitutional purposes, juveniles detained in facilities must receive equal protection.

FISCAL NOTE ON LOCAL GOVERNMENT

Agency Contact: Doug Sapp/Cheryl Roberts
1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes X No___
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect only the county jail. Only counties which have separate sections of jails to hold juveniles will be affected by this regulation.
3. State the aspect or service of local government to which this administrative regulation relates. Budget and financial records of county jail.
4. How does this administrative regulation affect the local government or any service it provides? Counties will have to continue to prepare and submit as well as budgets and keep financial records on the jail operations as is currently required by state law.

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:040. Personnel.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth personnel procedures to be followed in facilities.

Section 1. Staffing. (1) Each facility shall provide direct and continuous supervision. At least one (1) certified staff member shall be in the juvenile section of the facility at all times.
(2) When female juveniles are lodged in the facility, female staff shall be made available as needed to perform sensitive procedures to include but not limited to:
(a) Admission.
(b) Searches.

Section 2. Background Checks; Qualifications. (1) Prior to employment, all employees of the facility shall be subject to thorough background investigation to include criminal, medical, and employment history.
(2) All security employees of the facility shall be at least twenty-one (21) years of age.

Section 3. Compensation. All employees of the facility shall receive salaries at least equal to the State Minimum Wage Law except where Federal Minimum Wage Law has to be applied.

Section 4. Training. All staff shall be trained in a course developed and approved by the Justice Cabinet and shall be certified by the Justice Cabinet.

Section 5. Policy and Procedures. Written policy shall specify that equal employment opportunities exist for all positions.

Section 6. Physical Fitness. The jailer shall ensure that all employees maintain a level of physical fitness that will allow the employees to satisfactorily perform their duties.

Section 7. Code of Ethics. (1) The jailer shall make available to all employees a written code of ethics.
(2) The written code of ethics shall be incorporated in the facility's policy and

procedures manual and shall include but not be limited to the following:

(a) Employees shall not:

1. Exchange personal gifts or favors with juveniles, their family, or friends;

2. Accept any form of bribe or unlawful inducement;

3. Perform duties under the influence of intoxicants or consume intoxicants while on duty;

4. Violate or disobey established rules, regulations, or lawful orders from a superior;

5. Discriminate against any juvenile on the basis of race, religion, creed, gender, national origin, or other individual characteristics;

6. Employ corporal punishment or unnecessary physical force;

7. Subject juveniles to any form of unwarranted physical or mental abuse;

8. Intentionally demean or humiliate juveniles;

9. Bring any type of weapon or item declared as contraband into the facility without proper authorization;

10. Engage in critical discussion of staff members or juveniles in the presence of juveniles;

11. Divulge confidential information without proper authorization;

12. Withhold information which, in so doing, threatens the security of the facility, its staff, visitors, or the community;

13. Through negligence, endanger the well-being of self or others;

14. Engage in any form of business or profitable enterprise with juveniles; and

15. Inquire about, disclose, or discuss details of an juvenile's crime other than as may be absolutely necessary in performing official duties.

(b) Employees shall:

1. Comply with all established rules, regulations, and lawful orders from superiors;

2. Treat all juveniles in a fair, impartial manner; and

3. Report all violations of the code of ethics to the jailer.

(3) Any employee violation of this code of ethics shall be made a part of that employee's personnel file.

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: June 17, 1988

FILED WITH LRC: June 17, 1988 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1988 at 10 a.m. at the State Office Building, 10th Floor Conference Room. Individuals interested in attending this hearing shall notify this agency in writing by August 24, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given and opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Cheryl Roberts/Doug Sapp, Community Services & Facilities, 514 State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Doug Sapp/Cheryl Roberts

(1) Type and number of entities affected: This regulation is expected to affect less than 20 county jails which have separate sections to hold juveniles on a long-term basis.

(a) Direct and indirect costs or savings to those affected: Each juvenile holding facility will have to hire an additional five staff deputy jailers to provide supervision in the juvenile section of the jail.

1. First year: 5 x $15,000 = $75,000 for each facility.

2. Continuing costs or savings: Same costs as first year plus any costs of living increases.

3. Additional factors increasing or decreasing costs (note any effects upon competition): These jails will more than likely hold juveniles for other counties. The revenues from these contracts will offset some of the personnel costs.

(b) Reporting and paperwork requirements: There are no requirements.

(2) Effects on the promulgating administrative body: There will be no effect.

(a) Direct and indirect costs or savings: There are no costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: There are no factors.

(b) Reporting and paperwork requirements: There are no requirements.

(3) Assessment of anticipated effect on state and local revenues: Counties which contract with other counties to hold their juveniles will receive a new source of revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Safety of juveniles and protection of county's liability requires close supervision.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict. Some of these regulations duplicate minimum jail standards which affect the adult section of the jail.

(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. For constitutional purposes, juveniles detained in facilities must receive equal protection.

FISCAL NOTE ON LOCAL GOVERNMENT

Agency Contact: Doug Sapp/Cheryl Roberts

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes_X_ No___

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect only the county jail. Only counties which have separate sections of jails to hold juveniles will be affected by this regulation.

3. State the aspect or service of local

government to which this administrative regulation relates. This regulation relates to personnel requirements at county jails which qualify as juvenile holding facilities.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will require the fiscal court to increase appropriations to pay for the additional staff for the jail.

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:050. Physical plant.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth standards and procedures to be followed in the design and construction of facilities.

Section 1. Purpose. The purpose of this regulation is to provide minimum standards for the renovation or construction of facilities and for measuring compliance of existing facilities in accordance with KRS 441.011, 441.012, and 441.013, and Kentucky Construction/Renovation Standards.

Section 2. Consultation. The Corrections Cabinet shall provide for any county government which wishes to remodel an existing facility or construct a new facility, a consultant knowledgeable in the design, utilization, and operation of facilities. The consultant shall meet with the appropriate officials of that county and advise them in matters including but not limited to:

(1) Site selection.
(2) Probable need as it relates to capacity and types of juveniles to be housed.
(3) Sources of financing for constructing.
(4) Laws and regulations relating to treatment of juveniles.
(5) Laws and regulations relating to facilities for juveniles.
(6) Sources of revenue for operations of the facility.
(7) Probable cost for operation of the facility.
(8) Potential for shared facilities with adjoining counties.

Section 3. Site Acceptance. No facility shall be built without site acceptance by the Corrections Cabinet. The following criteria shall be considered in site selection including but not limited to:

(1) Size.
(2) Proximity of courts.
(3) Proximity of community resources.
(4) Availability of public transportation.
(5) Environmental health.
(6) Adequate parking.
(7) Provisions for future expansion.

Section 4. Construction Documents. Prior to the renovation or construction of any facility, plans and specifications shall be submitted to the Corrections Cabinet for review and approval as follows:

(1) Programming phase. This submission shall show:
(a) Evaluation of existing facility;
(b) Population analysis;
(c) Space requirements based on population analysis and standards for the facility and site outlined in the Kentucky Minimum Standards for Local Facilities;
(d) Staffing analysis;
(e) Cost analysis;
(f) Financing alternatives, if applicable;
(g) Summary and recommendations; and
(h) This phase is submitted on major renovation or new construction only and for information review purposes.
(2) Schematic phase.
(a) Scale drawings of each floor plan with all proposed rooms and areas one-eighth (1/8) inch minimum;
(b) Scale drawings of the site, locating the building, parking and other facilities - one (1) inch equals fifty (50) feet;
(c) Documentation of site as to:
1. Size;
2. Proximity to courts;
3. Proximity to community resources;
4. Availability of public transportation;
5. Environmental health;
6. Adequate parking; and
7. Provisions of future expansion.
(d) Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes and other related information;
(e) Scale elevation drawings of all exterior walls; and
(f) Schematic cost estimate.
(3) Design development phase.
(a) Scale drawings on each floor plan with all proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;
(b) All necessary construction drawings including construction details;
(c) Specifications for all materials and workmanship;
(d) A proposed contract with general and special conditions;
(e) Engineering calculations for the foundations, structure, heating, ventilating, air conditioning, lighting and plumbing; and
(f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.
(4) Construction document phase.
(a) Revised design development construction drawings following review by all applicable agencies.
(b) Signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include all changes required by the Corrections Cabinet.
(c) Revised design development specifications of material and workmanship following review by all applicable agencies.
(5) Contract administration.
(a) Signed copies of all contracts for construction, financing and bonding;
(b) Signed copies of all construction permits;
(c) Documentation of review by all other applicable state agencies; and
(d) All change orders must be submitted to the Corrections Cabinet for review and approval.
(6) The Corrections Cabinet will review all submissions within thirty (30) days of receipt and issue a letter of approval, acceptance with

required changes, or rejection with reasons. No construction shall be started until the construction document phase as required in subsection (5)(d) of this section has been approved.

(7) Depending on the site of the proposed constructions, renovation or addition the Corrections Cabinet may combine two (2) or more phases as outlined above for review and approval.

(8) All changes prior to the approval of final construction documents shall require appropriate modifications to the final construction documents including redrawing of plans and rewriting of specifications. All changes after the approval of final construction documents shall require adequate documentation which fully describes and illustrates the changes which may include written and/or graphic addenda, field orders and change orders. In addition a set of accurate as built drawings shall be submitted to Corrections within sixty (60) days of occupancy of the facility.

Section 5. Waiver of Compliance. (1) The Corrections Cabinet may grant a waiver of the implementation of the physical plant standards for an existing facility if the cabinet determines:

(a) That strict compliance will cause unreasonable difficulties;

(b) That a waiver will not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the facility; and

(c) That compliance is to be achieved in a manner other than that which is specified, but in a manner which is sufficient to meet the intent of these standards.

(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the Corrections Cabinet. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Identification and description of the specific difficulties involved in meeting strict compliance;

(c) Description of the alternative proposed; and

(d) Provision of sufficient documentation which will demonstrate that the waiver, if granted, will not jeopardize the security, supervision of juveniles, programs, or the safe, healthful, or efficient operation of the facility.

(3) A waiver, if granted by the Corrections Cabinet, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the Cabinet as conditions upon the waiver. No waiver shall be granted for longer than twelve (12) months. Any waiver granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

Section 6. Facility Design. (1) Each facility shall provide for sight and sound separation of adult and juvenile inmates.

(2) Depending upon its size and intended use, every facility shall include within its walls the following facilities and equipment:

(a) Entrance. Every facility shall have a separate and distinct entrance for juveniles.

(b) Booking area. The purpose is to provide a private and separate area, properly equipped to carry out admission and release procedures. All equipment shall be penal type.

(c) Confinement areas. The purpose of these areas is to provide suitable living conditions for all types of juveniles lodged in the facility. Design features for all living areas shall include:

1. Providing sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light.

2. Providing ventilation to meet air exchange as required in the state health codes.

3. Providing temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit - eighty-five (85) degrees Fahrenheit).

4. Shall be of approved masonry, concrete or steel construction.

5. All furnishings and equipment shall be penal type and permanently attached.

6. Each confinement area shall have floor drains to service each living area.

7. Be equipped with an approved securable food pass.

8. Electrical outlets when provided shall be ground-faulted or have ground-fault circuit breakers. Receptacle and switch plate covers shall be penal type.

(d) All cells and housing areas design features shall include:

1. Prisoner living areas shall be equipped with the security hardware to meet the security requirements of the juvenile(s) housed in the area.

2. All cells shall open into a dayroom and no cell shall be less than seventy (70) square feet. No cell shall have more than two (2) penal type bunks. When two (2) persons are housed in a cell, they shall not be detained in the cells for longer periods than twelve (12) hours.

3. Each cell shall contain:

a. A penal type commode, lavatory and drinking fountain, penal type bunks secured to floor and/or wall, penal type table with two (2) seats, and penal type storage area for personal property.

b. A penal type light fixture with controls nonaccessible to juveniles unless it has staff override.

4. If dorms are used, they must include:

a. Fifty (50) feet per juvenile.

b. One (1) commode/lavatory/drinking fountain per eight (8) juveniles.

c. One (1) shower per fifteen (15) juveniles.

d. Sufficient tables and benches to handle the number of juveniles housed in the dorm.

e. One (1) penal type storage area for personal property per juvenile.

f. One (1) penal type bunk secured to the floor or wall per juvenile.

5. Each dayroom area shall contain:

a. Thirty-five (35) square feet per juvenile.

b. One (1) commode per eight (8) juveniles.

c. One (1) lavatory per eight (8) juveniles.

d. One (1) drinking fountain per fifteen (15) juveniles.

e. One (1) shower per fifteen (15) juveniles.

f. Table and benches per rated capacity with space twenty-four (24) inches wide and twelve (12) inches deep per juvenile.

(e) The juvenile holding facility shall provide for the following support areas. If these areas are not contained in the juvenile holding facility, they may be shared with the

adult section of the facility under the following condition:

1. Policy and procedure shall dictate that access to all common use support areas shall be accomplished in such a way as to prevent sight and sound contact between adult and juvenile inmates.

2. Policy and procedures shall dictate that all common use support areas shall be controlled to prevent contact between adults and juveniles.

(f) Visiting area. This area shall provide for private communication with juveniles and be located in close proximity to the waiting area. All furnishings of this area shall be penal type and permanently attached.

(g) Multipurpose room. The purpose of this area is to provide space for assembly of juveniles for specific program activities.

(h) Outdoor recreation. The purpose of this area is to provide secure outdoor space for recreational activities. This area shall allow at least thirty-five (35) square feet per juvenile in an area with a minimum of 385 square feet.

(i) Medical exam room. The purpose of this room is to provide a separate and secure area for medical examinations and rendering medical treatment.

(j) Conference room. The purpose of this room is to provide space for confidential conferences between juveniles and lawyers, probation officers, clergy, etc.

Unless approved by the Corrections Cabinet, these areas shall comply with the requirements of the minimum jail standards.

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: June 17, 1988

FILED WITH LRC: June 17, 1988 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1988 at 10 a.m. at the State Office Building, 10th Floor Conference Room. Individuals interested in attending this hearing shall notify this agency in writing by August 24, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given and opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Cheryl Roberts/Doug Sapp, Community Services & Facilities, 514 State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Doug Sapp/Cheryl Roberts

(1) Type and number of entities affected: This regulation is expected to affect less than 20 county jails which have separate sections to hold juveniles on a long-term basis.

(a) Direct and indirect costs or savings to those affected: Most jails which qualify as juvenile holding facilities already meet the physical plant standards. Some vision barriers may be necessary.

1. First year: Less than $300 per facility.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There are no additional requirements.

(2) Effects on the promulgating administrative body: There is no effect.

(a) Direct and indirect costs or savings: There will be no costs or savings as cabinet is already inspecting jails and approving architectural plans.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: There are no new requirements.

(3) Assessment of anticipated effect on state and local revenues: There should be no effect on revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The physical plant requirements reflect minimum jail standards and statutory sight and sound requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict. Some of these regulations duplicate minimum jail standards which affect the adult section of the jail.

(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. For constitutional purposes, juveniles detained in facilities must receive equal protection.

FISCAL NOTE ON LOCAL GOVERNMENT

Agency Contact: Doug Sapp/Cheryl Roberts

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes_X_ No___

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect only the county jail. Only counties which have separate sections of jails to hold juveniles will be affected by this regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation refers to the space in the jail which holds juveniles.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires counties to meet certain physical plant requirements in order to hold juveniles long term.

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:060. Security; control.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth security procedures to be followed in local facilities.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing all security aspects of the facility's operations.

(2) The Corrections Cabinet shall provide technical assistance to the jailer in his efforts to formulate such written policy and procedure.

(3) These policies and procedures shall include but not be limited to:

(a) Juvenile rules and regulations;
(b) Staffing;
(c) Searches of juveniles and of secure areas;
(d) Visitation;
(e) Key and weapon control;
(f) Juvenile head counts;
(g) Surveillance checks;
(h) Emergency situations; and
(i) Facility schedule;
(j) Administering medication.

Section 2. Juvenile Supervision. Facility staff shall provide direct and continuous supervision. At least one (1) certified staff member shall be in the juvenile section of the facility at all times. Every hour there shall be an entry into the log reflecting the past hour's activities of each juvenile. No adult prisoner shall be allowed to enter the juvenile holding facility under any circumstances.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for inspecting all facility areas accessible to juveniles for contraband and physical security at least weekly.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) Items considered as contraband or items permitted in the facility shall be clearly defined in the facility rules.

(c) There shall be a written procedure for reporting security irregularities.

(2) No weapon, ammunition, chemical agent, related security equipment, or any object which represents the potential of being used as a weapon shall be permitted in the security area unless authorized by the jailer under emergency circumstances as determined by the jailer.

(3) All firearms, weapons, and chemical agents assigned to the facility shall be stored in an arsenal, vault, or other secure room under lock.

(a) This area shall be inaccessible to all unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) All security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure and located outside the security perimeter of the confinement area.

(6) Tools, supplies, and equipment which are hazardous shall be used by juveniles only under the direct supervision of facility personnel.

(7) At no time shall any juvenile be assigned to a position of authority over any other juvenile or given the responsibility of providing juvenile services such as commissary, telephone calls, or delivery of meals.

(8) Juveniles shall never be permitted to perform or assist in any security duties.

(9) Juveniles shall be thoroughly searched whenever entering or leaving the security perimeter.

(10) Written procedures shall be developed for transporting outside the facility.

(11) Each jailer shall develop written policies and procedures governing the use of physical restraints.

(12) No juvenile placed in physical restraints shall be left unattended.

(13) All facilities shall have key-control procedures which shall include but not be limited to:

(a) A key control center which is secure and inaccessible to unauthorized persons at all times.

(b) An accounting procedure for issuing and returning keys.

(c) A procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(d) A set of duplicate keys to be maintained in a separate, secure place.

(e) No juvenile shall be permitted to handle keys used to operate facility security locks.

(f) Keys operating locks to outside doors or gates shall not be permitted in the confinement area.

(g) Emergency keys and keys to critical security areas shall only be issued in accordance with written procedures established by the jailer.

(h) Precautions similar to those outlined above shall be taken to insure the security of all nonkey operated locking devices such as electrical switches or levers.

(i) Locks to outside exits shall be keyed differently from interior locks. Locks to the control room shall be keyed differently from all other locks.

(14) Trusties. At no time shall an adult trusty be permitted in either a program, support, or housing area occupied by juveniles.

Section 4. Daily Facility Log; Special Reports. A daily facility log shall be kept current and reflect all significant occurrences within the facility. Special reports shall include:

(1) Use of force.
(2) Disciplinary actions.
(3) Medical or mental health treatment.
(4) Feeding schedule and menus.
(5) Extraordinary occurrences.
(a) Fires.
(b) Assaults.
(c) Suicide or attempted suicide.
(d) Escape or attempted escape.
(6) Juvenile vandalism.
(a) Destruction of facility property.
(b) Flooding of plumbing fixtures.
(7) Staff roster for each shift.
(8) Telephone log of initial phone call(s).

(9) Visitors log.
(10) Fire planning sessions.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 17, 1988
FILED WITH LRC: June 17, 1988 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1988 at 10 a.m. at the State Office Building, 10th Floor Conference Room. Individuals interested in attending this hearing shall notify this agency in writing by August 24, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given and opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Cheryl Roberts/Doug Sapp, Community Services & Facilities, 514 State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Doug Sapp/Cheryl Roberts
(1) Type and number of entities affected: This regulation is expected to affect less than 20 county jails which have separate sections to hold juveniles on a long-term basis.
(a) Direct and indirect costs or savings to those affected: There are no costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.
(b) Reporting and paperwork requirements: This regulation requires policies and procedures similar to those in effect for the adult section of the jail be written for the juvenile section of the jail.
(2) Effects on the promulgating administrative body: There is no effect.
(a) Direct and indirect costs or savings: There are no savings or costs.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: This regulation does not impact revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation reflects currently acceptable correctional practices.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict. Some of these regulations duplicate minimum jail standards which affect the adult section of the jail.
(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. For constitutional purposes, juveniles detained in facilities must receive equal protection.

FISCAL NOTE ON LOCAL GOVERNMENT

Agency Contact: Doug Sapp/Cheryl Roberts
1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes X No___
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect only the county jail. Only counties which have separate sections of jails to hold juveniles will be affected by this regulation.
3. State the aspect or service of local government to which this administrative regulation relates. Policy and procedures at the county jails.
4. How does this administrative regulation affect the local government or any service it provides? This regulation requires that policy and procedures relating to security in effect for the adult section of the jail also be applied to the juvenile section of the jail.

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:070. Safety; emergency procedures.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth safety and emergency procedures to be followed in local facilities.

Section 1. Policy and Procedure. (1) Each facility shall have a written policy and procedure which specify fire prevention regulations and practices to ensure the safety of juveniles, visitors, and staff. These shall include but not be limited to:
(a) Provision for fire emergency planning sessions for staff at least quarterly.
(b) Written documentation of fire planning sessions.
(c) A fire safety inspection by the Corrections Cabinet at least once a year.
(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by staff monthly.
(e) Smoking restrictions and regulations.
(f) Written evacuation plan coordinated with local fire officials.
(2) Each facility shall have written policy and procedures for emergency situations including but not limited to:
(a) Escapes.
(b) Taking of hostages.
(c) Riots.
(d) Food poisoning.
(e) Civil disturbances in the community.
(f) Natural disasters.
(g) Suicides.

(h) Other deaths and disorder.

Section 2. Physical Plant. (1) Each facility shall comply with the NFPA Life Safety Code (1981 Edition) which is hereby incorporated by reference.

(2) Each facility shall have exits which are distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(3) Each facility shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(4) In all areas where a juvenile may be confined, each facility shall be provided with an emergency smoke evacuation system activated by smoke detectors and be operated by emergency power.

(5) Each facility shall have an approved fire alarm and smoke detection system.

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: June 17, 1988

FILED WITH LRC: June 17, 1988 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1988 at 10 a.m. at the State Office Building, 10th Floor Conference Room. Individuals interested in attending this hearing shall notify this agency in writing by August 24, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given and opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Cheryl Roberts/Doug Sapp, Community Services & Facilities, 514 State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Doug Sapp/Cheryl Roberts

(1) Type and number of entities affected: This regulation is expected to affect less than 20 county jails which have separate sections to hold juveniles on a long-term basis.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: This regulation requires policies and procedures similar to those in effect for the adult section of the jail be written for the juvenile section of the jail.

(2) Effects on the promulgating administrative body: There is no effect.

(a) Direct and indirect costs or savings: There are no costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This regulation does not impact revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation reflects currently acceptable correctional practices.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict. Some of these regulations duplicate minimum jail standards which affect the adult section of the jail.

(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. For constitutional purposes, juveniles detained in facilities must receive equal protection.

FISCAL NOTE ON LOCAL GOVERNMENT

Agency Contact: Doug Sapp/Cheryl Roberts

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No___

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect only the county jail. Only counties which have separate sections of jails to hold juveniles will be affected by this regulation.

3. State the aspect or service of local government to which this administrative regulation relates. Policy and procedures of county jails.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires that policies and procedures relating to safety in effect for the adult section of the jail also be applied to the juvenile section of the jail.

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:080. Sanitation; hygiene.

RELATES TO: KRS 441.057

PURSUANT TO: KRS 441.057

NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures to provide proper sanitation and hygiene in facilities.

Section 1. Procedures. (1) The jailer shall provide for the control of vermin and pests.

(2) The facility shall provide for both solid and liquid waste disposal.

(3) The jailer shall have a written preventative maintenance plan which includes but is not limited to:

(a) A cleaning schedule for various locations and items in the facility.

(b) A schedule for inspections by the jailer.

(c) A schedule for trash and garbage removal.
(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.
(4) The facility shall have fresh and purified air circulating within juvenile living and activity areas.
(5) The facility shall furnish clean sanitized bedding to juveniles except in holding areas and unless it is determined to be detrimental to a particular juvenile. Bedding shall include:
(a) One (1) mattress.
(b) One (1) mattress cover.
(c) One (1) blanket, when conditions require.
(d) One (1) sheet.
(e) One (1) pillow.
(f) One (1) pillowcase.
(6) Juvenile bedding shall be cleaned on a regular basis according to the following schedule:
(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week.
(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner.
(c) Mattresses and pillows shall be cleaned quarterly.
(7) Each juvenile shall be issued a clean towel upon admission to a juvenile living area. Towels shall be laundered every fourth day.
(8) Clean clothing shall be provided for juveniles at least twice a week.
(9) All floors, toilets, and sinks in the facility shall be washed daily or more often as necessary.
(10) All showers shall be cleaned on at least a weekly basis.
(11) All juveniles assigned to juvenile living areas shall be issued the following hygienic items:
(a) Soap.
(b) Toothbrush.
(c) Toothpaste.
(d) Toilet paper.
(e) Female sanitary supplies (where applicable).
(12) All juveniles shall be permitted to shave daily. If a communal razor is used, it shall be sanitized before each use. No juvenile shall be forced to shave except for medical purposes and under the specific orders of the medical authority.
(13) Hair cutting services or sanitized hair cutting equipment shall be available to all juveniles. Juveniles shall not be forced to cut their hair except for medical purposes and under the specific orders of the medical authority.
(14) All juveniles shall be provided shower facilities within twenty-four (24) hours of admission. Juveniles shall be permitted to shower daily.
(15) All juveniles in the facility shall be provided with hot and cold running water in showers and lavatories.
(16) As required in KRS 441.064, the facility shall be inspected by the Corrections Cabinet biannually.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 17, 1988
FILED WITH LRC: June 17, 1988 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1988 at 10 a.m. at the State Office Building, 10th Floor Conference Room. Individuals interested in attending this hearing shall notify this agency in writing by August 24, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given and opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Cheryl Roberts/Doug Sapp, Community Services & Facilities, 514 State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Doug Sapp/Cheryl Roberts
(1) Type and number of entities affected: This regulation is expected to affect less than 20 county jails which have separate sections to hold juveniles on a long-term basis.
(a) Direct and indirect costs or savings to those affected: There are no costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.
(b) Reporting and paperwork requirements: This regulation requires policies and procedures similar to those in effect for the adult section of the jail be written for the juvenile section of the jail.
(2) Effects on the promulgating administrative body: There is no effect.
(a) Direct and indirect costs or savings: There are no costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: This regulation does not impact revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation reflects currently acceptable correctional practices.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict. Some of these regulations duplicate minimum jail standards which affect the adult section of the jail.
(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. For constitutional purposes, juveniles detained in facilities must receive equal protection.

FISCAL NOTE ON LOCAL GOVERNMENT

Agency Contact: Doug Sapp/Cheryl Roberts
1. Does this administrative regulation relate to any aspect of a local government, including

any service provided by that local government?
Yes X No___
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect only the county jail. Only counties which have separate sections of jails to hold juveniles will be affected by this regulation.
3. State the aspect or service of local government to which this administrative regulation relates. Policy and procedures of county jails.
4. How does this administrative regulation affect the local government or any service it provides? This regulation requires that policies and procedures relating to sanitation and hygiene in effect for the adult section of the jail also be applied to the juvenile section of the jail.

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:090. Medical services.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures for the proper delivery of medical services in facilities.

Section 1. Procedure Services. (1) The facility's medical services shall be provided by contracting with a Kentucky licensed health care provider.
(2) The medical staff and mental health professionals shall not be restricted by the jailer in the performance of their duties except to adhere to the facility's security requirements.
(3) All health care staff working in the facility shall comply with state licensure and certificate requirements commensurate with health care personnel working elsewhere in the community. Copies of such licenses and certificates for health care staff employed by the facility shall be maintained on file within the facility.
(4) A daily medical log shall be maintained documenting specific medical treatment rendered in the facility. This log shall be kept current to the preceding hour.
(5) Juveniles shall not perform any medical functions within the facility.
(6) Juveniles shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the facility.
(7) All medical procedures shall be performed according to written and standing orders issued by the responsible medical authority.
(8) Medical screening shall be performed by the receiving officer on all juveniles upon their admission to the facility and before their placement in juvenile living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include but not be limited to:
(a) Current illnesses and health problems.
(b) Medications taken and special health requirements.
(c) Screening of other health problems designated by the medical authority.
(d) Behavioral observation, state of consciousness and mental status.
(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics.
(f) Condition of skin and body orifices, including rashes and infestations.
(g) Disposition and referral of juveniles to qualified medical personnel on an emergency basis.
(h) Require that a health appraisal for each juvenile is completed within seven (7) days after arrival at the facility. In the case of a juvenile who has documented evidence a health appraisal is not required except as determined by the designated health authority.
(i) Provide for the prompt notification of juveniles' parents/guardians and the responsible agency in case of serious illness, surgery, injury or death.
(j) Provide that juveniles in need of detoxification for chemical impairment shall not be admitted to the facility, but shall be referred for appropriate medical care.
(9) Sick call conducted by the medical authority shall be available to each juvenile as follows:
(a) Once per week, in facilities with an average daily population for the preceding month of less than fifty (50) juveniles.
(b) Three (3) times per week, in facilities with an average daily population for the preceding month from fifty-one (51) to 200 juveniles.
(c) Five (5) times per week, in facilities with an average daily population for the preceding month of more than 200 juveniles.
(10) Deputy jailers and correctional officers shall have current training in standard first aid equivalent to that defined by the American Red Cross.
(11) At least one (1) facility staff member per shift shall be trained and certified to perform approved CPR (Cardiopulmonary Resuscitation). (January 1, 1984)
(12) Emergency medical, dental, and psychiatric care shall be available to all juveniles commensurate with the level of such care available to the community.
(13) Medical research shall not be permitted on any juvenile in the facility.
(14) Access to the juvenile's medical file shall be controlled by the medical authority and the jailer. The physician-patient privilege shall apply to the medical record. The medical record is separate from custody and other administrative records of the facility.
(15) All examinations, treatments, and procedures have the informed consent of the parent, guardian, or legal custodian shall apply when required by law.
(16) In accordance with KRS 72.025, a postmortem examination shall be conducted on all juveniles who die while in the custody of the jailer.
(17) The jailer shall have written delousing procedures.
(18) All facility staff who administer medications to juveniles shall be trained in the proper procedures as outlined in the Policy and Procedures Manual.

(19) The facility shall have first aid kits available at all times.

(20) A juvenile who has been prescribed treatment by a recognized medical authority and cannot receive that treatment in the facility shall be moved to another confinement facility which can provide the treatment or may be moved to a hospital.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 17, 1988
FILED WITH LRC: June 17, 1988 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1988 at 10 a.m. at the State Office Building, 10th Floor Conference Room. Individuals interested in attending this hearing shall notify this agency in writing by August 24, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given and opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Cheryl Roberts/Doug Sapp, Community Services & Facilities, 514 State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Doug Sapp/Cheryl Roberts

(1) Type and number of entities affected: This regulation is expected to affect less than 20 county jails which have separate sections to hold juveniles on a long-term basis.

(a) Direct and indirect costs or savings to those affected: There will be costs associated with a health appraisal for juveniles not released within seven days. The exact costs cannot be determined as data is not available on the number of juveniles detained by length of stay.

1. First year: Dependent on number of juveniles held.

2. Continuing costs or savings: Dependent on number of juveniles held.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: The medical records are already required for the adult section of the jail and will have to be kept for the juvenile section of the jail.

(2) Effects on the promulgating administrative body: There are no effects.

(a) Direct and indirect costs or savings: There are no costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no new requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no effect or revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The definitions reflect accepted correctional practices.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict. Some of these regulations duplicate minimum jail standards which affect the adult section of the jail.

(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. For constitutional purposes, juveniles detained in facilities must receive equal protection.

FISCAL NOTE ON LOCAL GOVERNMENT

Agency Contact: Doug Sapp/Cheryl Roberts

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes X No___

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect only the county jail. Only counties which have separate sections of jails to hold juveniles will be affected by this regulation.

3. State the aspect or service of local government to which this administrative regulation relates. Policy and procedures of county jails.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires that policies and procedures relating to medical services in effect for the adult section of the jail also be applied to the juvenile section of the jail.

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:100. Food services.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures for proper food services in local facilities.

Section 1. Procedures. (1) The facility shall comply with the Kentucky Food Service Establishment Act and State Food Service Code (KRS 219.011 through 219.081) and the Kentucky Occupational Safety and Health Standards for General Industry (803 KAR 2:020 and 29 CFR Part 1910).

(2) Juveniles shall be provided a nutritionally adequate diet containing at least 3,000 calories per day.

(3) Juveniles shall receive three (3) meals per day, two (2) of which shall be hot. Not more than fourteen (14) hours shall elapse between any two (2) meals.

(4) The jailer shall provide for religious diets.

(5) The jailer shall provide for medical diets where prescribed by a medical authority.
(6) The jailer shall maintain accurate records of all meals served.
(7) Food shall not be used for disciplinary or reward purposes.
(8) A nutritionist or dietician shall approve the nutritional value of the facility menu on an annual basis.
(9) A staff member shall directly supervise all food prepared within the facility.
(10) All food shall be served under the direct supervision of a staff member.
(11) The facility shall have sufficient cold and dry food storage facilities.
(12) The jailer or his designee shall inspect the food service area daily.
(13) Food shall not be prepared or stored in juvenile living areas.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 17, 1988
FILED WITH LRC: June 17, 1988 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1988 at 10 a.m. at the State Office Building, 10th Floor Conference Room. Individuals interested in attending this hearing shall notify this agency in writing by August 24, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given and opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Cheryl Roberts/Doug Sapp, Community Services & Facilities, 514 State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Doug Sapp/Cheryl Roberts
(1) Type and number of entities affected: This regulation is expected to affect less than 20 county jails which have separate sections to hold juveniles on a long-term basis.
(a) Direct and indirect costs or savings to those affected: There are no costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.
(b) Reporting and paperwork requirements: This regulation requires policies and procedures similar to those in effect for the adult section of the jail be written for the juvenile section of the jail.
(2) Effects on the promulgating administrative body: There is no effect.
(a) Direct and indirect costs or savings: There are no costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: This regulation does not impact revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation reflects currently acceptable correctional practices.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict. Some of these regulations duplicate minimum jail standards which affect the adult section of the jail.
(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. For constitutional purposes, juveniles detained in facilities must receive equal protection.

FISCAL NOTE ON LOCAL GOVERNMENT

Agency Contact: Doug Sapp/Cheryl Roberts
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CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:110. Classification.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures for the classification of juveniles.

Section 1. Procedure. (1) Each facility shall develop an appropriate juvenile classification system, which shall be included in the facility's written policy and procedure manual.
(2) The juvenile classification system shall provide for the separation of the following categories of juveniles:
(a) Male and female juveniles;
(b) Mental inquest detainees and other juveniles;
(c) Mentally ill or mentally retarded juveniles and other juveniles;

(d) Juveniles with a tendency to harm others, be harmed by others, or requiring administrative segregation and other juveniles;
(e) Juveniles with communicable disease and other juveniles.
(3) The juvenile classification system shall prohibit discrimination or segregation based upon race, color, creed, or national origin.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 17, 1988
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FISCAL NOTE ON LOCAL GOVERNMENT

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CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:120. Admission; release.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. Each facility shall develop written admission, orientation, and release procedures to be included in the facility's policy and procedure manual.

Section 2. Admission. (1) Any juvenile in need of emergency medical attention shall not be admitted to the facility until a medical examination has been conducted. A denial of admission form shall be completed which lists the reasons for the denial and shall be signed by the facility staff member on duty.
(2) The facility staff shall assure that each juvenile is committed under proper legal authority by a duly authorized officer.
(3) An intake form shall be completed on every new juvenile admission and shall include but not be limited to the following:
(a) Time and date of commitment;
(b) Name, alias, nickname;
(c) Official charge - cite five (5) digit UOR number;
(d) Authority ordering commitment;

(e) Unit of government to be billed;
(f) Signature and title of arresting or committing officer;
(g) Date of birth;
(h) Race;
(i) Sex;
(j) Height and weight;
(k) Name, relationship, address and phone number of the parent, guardian, or person juvenile resides with at time of admission;
(l) Education and school attended;
(m) Employment, if any;
(n) Current or last known address;
(l) Telephone number;
(m) Marital status;
(n) Religion;
(o) Marital status;
(p) Social Security number;
(q) Health status (including current medications, known allergies, diet or other special medical needs);
(r) The name of any known person in the facility who might be a threat to the arrestee; and
(s) Mental health history (including past hospitalizations, comprehensive care treatment, current treatment, and medication).
(4) Staff shall insure the notification of family custodian or guardian.
(5) The facility staff shall conduct a search of juveniles and their possessions.
(a) Each juvenile shall be searched for contraband in such a manner as responsible staff reasonably determine is necessary to protect the safety of fellow juveniles, staff, and institutional security. Such search shall be conducted in a private area and in a manner which protects the juvenile's dignity to such extent as possible in that particular facility.
(b) When a strip search is conducted, it shall be performed by a staff person of the same sex as the juvenile, witnessed by a staff person of the same sex as the juvenile.
(c) When a strip search of a juvenile is conducted, it shall include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries, "health tags," and body vermin. A less complete search shall include the same checks to the extent determined reasonably necessary.
(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the juvenile is carrying contraband there and such search shall only be conducted by medically trained persons (physician, emergency medical technician, registered nurse, licensed practical nurse) in a private location and under sanitary conditions.
(e) Strip searches are done without specific authorization only upon entry to the facility and at all other times are based on reasonable suspicion.
(6) Each facility shall develop written policies and procedures, specifying the personal property that juveniles may retain in their possession.
(a) Any cash or personal property which is taken from the juvenile upon admission shall be listed by complete description on a receipt form, and securely stored pending the juvenile's release. The receipt shall be signed by the receiving officer and the juvenile and kept for the facility record.
(b) If the juvenile is a mental inquest detainee, or is mentally ill or mentally retarded, there shall be at least one (1) witness to verify this transaction. As soon as the juvenile is able to understand and account for his actions, he shall sign the receipt.
(c) Personal property shall be released only to a parent or guardian and must have the juvenile's signature of approval and the signature of the parent or guardian.

Section 3. Orientation. (1) As soon after assignment as possible, an oral or written orientation shall be made available to each juvenile.
(2) The orientation shall provide the juvenile with information regarding his confinement including but not limited to the following:
(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the juvenile's confinement;
(b) Rules of juvenile conduct;
(c) Disciplinary procedures;
(d) Information regarding programs (work, educational and vocational training, counseling, and other social services); and
(e) Procedures for making requests or registering complaints with the facility staff, judiciary, or Corrections Cabinet personnel.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any juvenile from confinement.
(2) When a juvenile is released or removed for any legal purpose to the custody of another, the identity of the receiving authority shall be verified.
(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the juvenile was released.
(4) Prior to the release or removal of a juvenile, the receiving authority shall sign an authorized release form.
(5) Before the jailer releases a juvenile to an out-of-state jurisdiction, he shall consult with the appropriate prosecutorial office in the county.
(6) Any property, not legally confiscated or retained from the juvenile upon admission shall be returned to the juvenile at the time of release.
(7) Each juvenile shall sign a receipt for property returned at the time of release.
(8) Any complaint regarding property returned must be submitted in writing with specific details within twenty-four (24) hours.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 17, 1988
FILED WITH LRC: June 17, 1988 at noon
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Doug Sapp/Cheryl Roberts
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(b) Reporting and paperwork requirements: This regulation requires policies and procedures similar to those in effect for the adult section of the jail be written for the juvenile section of the jail.
(2) Effects on the promulgating administrative body: There is no effect.
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(3) Assessment of anticipated effect on state and local revenues: This regulation does not impact revenues.
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CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:130. Juvenile programs; services.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures for juvenile programs and services.

Section 1. Programs. (1) Written policy and procedure shall provide that juvenile programs and services are available and include but are not limited to social services, religious services, recreation, leisure time activities, and library services.
(2) Education programs shall be made available in accordance with the state law.

Section 2. Library Services. Where resources are available in the community, library services may be made available to all juveniles.

Section 3. Religious Programs. Written policy and procedure shall ensure the constitutional rights to juveniles to voluntarily practice their own religious activities, subject only to those limitations necessary to maintain the order and security of the facility.

Section 4. Recreation Programs. (1) Written policy and procedure shall provide all juveniles with the opportunity to participate in an average of one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. Where the security and safety of the facility and the weather permits, there shall be outdoor exercise.
(2) Leisure time and recreation programs shall be scheduled to permit juveniles to participate in, but not be limited to, such activities as board games, arts and crafts, radio and television to relieve idleness and boredom.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 17, 1988
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4. How does this administrative regulation affect the local government or any service it provides? This regulation requires that policies and procedures relating to services and programs in effect for the adult section of the jail also be applied to the juvenile section of the jail.

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:140. Juvenile rights.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures to ensure the protection of juvenile rights.

Section 1. Policy and Procedure. (1) Each facility shall have a written statement of juvenile rights which shall include but not be limited to:
(a) Access to courts.
(b) Access to attorney.
(c) Mail.
(d) Telephone.
(e) Grievances.
(f) Search and seizure.
(g) Disciplinary procedure.
(h) Racial segregation.
(i) Medical care.
(j) Mental health care.
(k) Religion.
The statement of juvenile rights shall be posted in a conspicuous place in the booking and juvenile living areas of the facility.
(2) The jailer shall not prohibit a juvenile's right of access to the judicial process.
(3) The jailer shall ensure the right of juveniles to have confidential access to their attorney and their authorized representative.
(4) The jailer shall have a written policy which defines the facility's visitation rules and regulations, which shall include but not be limited to:
(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which must be during the weekend.
(b) At least one (1) visit per week per juvenile shall be allowed except when a juvenile has been assessed a disciplinary penalty for an infraction of rules governing visitation.
(c) Visits shall not be less than fifteen (15) minutes.
(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit.
(e) Children, when accompanied by an adult, shall be permitted to visit juveniles.
(5) Attorneys, clergy, and medical personnel shall be permitted to visit juveniles at reasonable hours other than during regularly scheduled visiting hours and shall not count as

an allotted visit.
(6) Visitors shall register before admission and may be denied admission for refusal to register, for refusal to consent to search or for any violation.
(7) Juveniles shall not be restricted in regard to whom they may have as a visitor unless the jailer determines that a visitor should be excluded due to the existence of one (1) or more of the following conditions:
(a) The visitor represents a clear and present danger to security.
(b) The visitor has a past history of disruptive conduct at the facility.
(c) The visitor is under the influence of alcohol or drugs.
(d) The visitor refuses to submit to search or show proper identification.
(e) The juvenile refuses the visit.
(8) The jailer shall not listen to visitors' conversations but may observe the visitation for security reasons.

Section 2. Mail. (1) The jailer shall have written policy and procedure for receiving and sending mail that protects the juvenile's personal rights and provides for reasonable security practices consistent with the operation of the facility.
(2) Juveniles shall be allowed to correspond with anyone so long as such correspondence does not violate any state or federal law except that caution shall be taken to protect the juvenile's rights in accordance with court decisions regarding correspondence.
(3) Incoming mail may be inspected for contraband items prior to delivery, unless such mail is received from the courts, attorney of record or public officials; then it may be opened and inspected in the presence of the juvenile.

Section 3. Telephone. (1) Newly admitted juveniles shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of their choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.
(2) The jailer or his designee shall maintain a log of all telephone calls made by an juvenile during the admission procedure. The log shall document the date, time and party contacted.
(3) Written policy and procedure shall permit each juvenile to complete at least one (1) telephone call each week. Any expense incurred for calls shall be borne by the juvenile or the party called.
(4) A minimum of five (5) minutes shall be allotted for each phone call.
(5) Telephone calls shall not be routinely monitored. If calls are monitored, the juvenile shall be notified.
(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) Juveniles shall be granted the right to practice their religion within limits necessary to maintain facility order and security.
(2) Juveniles shall be afforded an opportunity to participate in religious services and receive religious counseling within the facility.
(3) Juveniles shall not be required to attend or participate in religious services or discussions.

Section 5. Access to Programs. The jailer shall ensure equal access to programs and services for all juveniles provided the security and order of the facility are not jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written juvenile grievance procedure which shall be available to all juveniles. These procedures shall include provisions for:
(1) Responses, within a reasonable time limit, to all grievance complaints.
(2) Equal access to all juveniles.
(3) Guarantees against reprisal.
(4) Resolving legitimate complaints.

Section 7. Searches. (1) Each search of a juvenile for contraband shall be done in such a manner as the jailer determines is necessary to insure the safety of juveniles and staff, and security of the facility.
(2) Each search shall be conducted in a private area and in a professional manner which protects the juvenile's dignity to such extent as possible in that particular facility.
(3) All strip searches shall be performed by a staff person of the same sex as the juvenile, and witnessed by a staff person of the same sex as the juvenile.

Section 8. Disciplinary Rights. Each facility shall have a written policy and procedure for maintaining discipline which is consistent with constitutional requirements for due process.

Section 9. Medical. Each juvenile shall be afforded access to necessary medical care.

Section 10. Volunteers. The policy and procedure manual shall establish guidelines for the selection and use of volunteers in the facility.

Section 11. Rules and Discipline. The facility shall adopt written rules of juvenile conduct which specify acts prohibited within the institution and penalties that may be imposed for various degrees of violation; the written rules shall be reviewed annually and updated if necessary.

JOHN T. WIGGINTON, Secretary
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3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: This regulation does not impact revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation reflects currently acceptable correctional practices.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict. Some of these regulations duplicate minimum jail standards which affect the adult section of the jail.
(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. For constitutional purposes, juveniles detained in facilities must receive equal protection.

FISCAL NOTE ON LOCAL GOVERNMENT

Agency Contact: Doug Sapp/Cheryl Roberts
1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes_X_ No___
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect only the county jail. Only counties which have separate sections of jails to hold juveniles will be affected by this regulation.
3. State the aspect or service of local government to which this administrative regulation relates. Policy and procedures of county jails.
4. How does this administrative regulation affect the local government or any service it provides? This regulation requires that policies and procedures relating to rights in effect for the adult section of the jail also be applied to the juvenile section of the jail.

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:150. Hearings, procedures, disposition.

RELATES TO: KRS Chapter 441
PURSUANT TO: KRS 441.013
NECESSITY AND FUNCTION: The Secretary of the Kentucky Corrections Cabinet is authorized by KRS 441.013(3) to hear matters covered by the Order of the Cabinet requesting county facilities, correctional or detention facilities to comply with the minimum standards for local facilities pursuant to KRS 441.011 and to issue, modify or repeal the order at the conclusion of the hearing.

Section 1. Definitions. (1) "Secretary" means the Secretary of the Corrections Cabinet.
(2) "Cabinet" means the Kentucky Corrections Cabinet.
(3) "Standards" means the minimum facility standards for local facilities.
(4) "Hearing officer" means a hearing officer appointed by the secretary pursuant to KRS 441.013.
(5) "Proceeding" means any proceeding before the secretary or before a hearing officer.
(6) "Day" means a calendar day.
(7) "Order" means the order of the secretary requiring the petitioner(s) to comply with the minimum facility standards for local jails as specified.
(8) "Petitioner" means the jailer or county/judge executive who requests a hearing for review of the secretary's order.
(9) "Facility" means county facilities and correctional or detention facilities, including correctional facilities defined in KRS 67B.020 and juvenile detention facilities, operated by and under the supervision of any county, city or urban county government.

Section 2. Assignment of Hearing; Filings. (1) Pursuant to KRS 441.013(3), cases coming before the secretary may be assigned to a hearing officer within the discretion of the secretary for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the secretary.
(2) A recommended order or adjudication by the hearing officer or the initial order of the secretary, if dismissed or disposed of as provided in subsection (1) of this section, or any modification or repeal of the initial order, shall become the final order of the secretary under the provisions of KRS 441.013(3), appealable to the Franklin Circuit Court, thirty (30) days from the date of issue.
(3) Prior to the assignment of a case to a hearing officer, the county jailer or county judge/executive shall, within seventy-two (72) hours of receipt of notification of order,

request in writing a public hearing before the secretary or his designee on the matters covered by said order to the Secretary of Corrections, State Office Building, Fifth Floor, Frankfort, Kentucky 40601. Subsequent to the assignment of the case to a hearing officer and prior to the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice of hearing.

(4) All evidence and witnesses of both parties and intervenors and all proof must be presented at the time of hearing. No additional evidence will be permitted thereafter except in unusual circumstances and within the discretion of the secretary or the hearing officer.

(5) All hearings shall be held in Frankfort, Kentucky unless otherwise ordered by the secretary.

(6) Unless otherwise ordered, all filing may be accomplished by first class mail.

(7) Filing is deemed effective at the time of mailing.

Section 3. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) These rules shall govern all proceedings before the cabinet and its hearing officers.

(2) In the absence of a specific provision, procedure shall be in accordance with the Kentucky Rules of Civil Procedure.

Section 4. Computation of Time. (1) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall be included unless it is a Saturday, Sunday, or federal or state holiday, in which event the period begins to run on the next working day. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday in which event the period runs until the end of the next working day. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(2) Where service of a pleading or documents is by mail pursuant to Section 2 of this regulation, three (3) days shall be added to the time allowed by these rules for the filing of a responsive pleading.

Section 5. Notice and Time of Hearing. (1) Notice of hearings shall be given to all parties and intervenors within forty-five (45) days from the receipt of the request for hearing unless otherwise ordered by the secretary or his designee. No hearing shall be held later than ninety (90) days from the date of request.

(2) The notice of hearing shall include:

(a) Statement of the time and place of the hearing.

(b) The name and address of the assigned hearing officer.

(c) Statement of the legal authority and jurisdiction under which the hearing is held.

Section 6. Continuance of Hearing. (1) Continuance of a hearing ordinarily will not be allowed.

(2) Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least three (3) days in advance of the time set for the hearing. The request for continuance must include the reasons therefor.

(3) Continuance of hearing not in excess of fifteen (15) days may be granted in the discretion of the hearing officer. One (1) additional continuance not in excess of fifteen (15) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. No additional continuance may be granted without approval of the secretary.

Section 7. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer.

(2) Requests for a newly scheduled hearing must be made in the absence of extraordinary circumstances within five (5) days after the scheduled hearing date.

(3) The secretary or the hearing officer, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

Section 8. Consolidation. Cases may be consolidated on the motion of any party, on the hearing officer's own motion, or on the secretary's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

Section 9. Severance. Upon its own motion, or upon motion of any party or intervenor, the secretary or the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Section 10. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or in the event of a settlement or dismissal before issuance of a recommended order.

(2) The petition shall set forth the interest of the petitioner in the proceeding and show that participation of the petitioner will assist in the determination of the issues in question and that the intervention will not unnecessarily delay the proceeding.

(3) The secretary or the hearing officer may grant a petition for intervention to such an extent and upon such terms as the secretary or the hearing officer shall determine.

(4) The caption of all cases where intervention is allowed shall reflect such intervention by adding to the caption after the name of the respondent the name of the intervenor, followed by the designation "intervenor."

Section 11. Service. (1) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

(2) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(4) Proof of service shall be accomplished by

a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(5) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

Section 12. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 13. Response to Motions. Any party or intervenor upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 14. Failure to File. Failure to file any pleading pursuant to these rules when due, may, in the discretion of the secretary or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 15. Withdrawal of Notice of Hearing. At any stage of a proceeding, a party may withdraw his notice of hearing, subject to the approval of the secretary.

Section 16. Prehearing Conference. (1) At any time before a hearing, the secretary or the hearing officer, on their own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

(2) The secretary or the hearing officer may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.

Section 17. Requests for Admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen (15) days after service of the request, or within such shorter or longer time as the secretary or the hearing officer may prescribe, the party, to whom the request is directed serves upon the party requesting the admission of a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with the provisions of these rules and filed with the secretary within the time allotted and shall be a part of the record.

Section 18. Discovery Depositions and Interrogatories. (1) Except by special order of the secretary or the hearing officer, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(2) In the event the secretary or the hearing officer grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

Section 19. Failure to Comply with Orders for Discovery. If any party or intervenor fails to comply with an order of the secretary or the hearing officer to permit discovery in accordance with the provisions of these rules, the secretary or the hearing officer may issue appropriate orders.

Section 20. Reporter's Fees. Reporter's fees shall be equally shared by all parties. This shall include the reporter's per diem costs and the cost of the original transcript. All other copies will be paid by the requesting party.

Section 21. Transcript of Testimony. Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard. The hearing officer shall promptly serve notice upon each of the parties and intervenors of such filing. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of fees fixed therefor.

Section 22. Duties and Powers of Hearing Officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The hearing officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and regulations of the cabinet; to:

(1) Administer oaths and affirmations;

(2) Rule upon offers of proof and receive relevant evidence;

(3) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(4) Hold conferences for the settlement or simplification of the issues;

(5) Dispose of procedural requests or similar matters including motions referred to the hearing officer by the secretary and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of this decision;

(6) Examine witnesses and to introduce into the record documentary or other evidence;

(7) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(8) Adjourn the hearing as the needs of justice and good administration require; and

(9) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the cabinet.

Section 23. Exhibits. (1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless

excluded by the hearing officer pursuant to Section 27 of this regulation.

(3) Unless the hearing officer finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

(4) All exhibits offered, but denied admission into evidence, shall be identified as in subsection (1) of this section and shall be placed in a separate file designed for rejected exhibits.

Section 24. Rules of Evidence. Hearings before the cabinet and its hearing officers insofar as practicable shall be governed by the rules of evidence applicable in the courts of the Commonwealth of Kentucky.

Section 25. Burden of Proof. In all proceedings commenced by the filing of a notice of hearing, the burden of proof shall rest with the cabinet.

Section 26. Objections. (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(2) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section 27. Recommendations of Hearing Officer; Exceptions; Final Order. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a recommended order to the secretary disposing of all issues before him.

(2) Any party may file exceptions to the hearing officer's findings of fact, conclusions of law, and recommended order within ten (10) days of the date of said findings of fact, conclusions of law, and recommended order.

(3) The secretary shall, within forty-five (45) days of the date of the hearing officer's findings of fact, conclusions of law, and recommended order, issue a final order modifying, repealing, or adopting the findings of fact, conclusions of law and recommended order of the hearing officer.

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: June 17, 1988

FILED WITH LRC: June 17, 1988 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1988 at 10 a.m. at the State Office Building, 10th Floor Conference Room. Individuals interested in attending this hearing shall notify this agency in writing by August 24, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given and opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Cheryl Roberts/Doug Sapp, Community Services & Facilities, 514 State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Doug Sapp/Cheryl Roberts

(1) Type and number of entities affected: This regulation would affect counties who appealed enforcement orders issued by the Corrections Cabinet relative to the juvenile holding facilities regulations.

(a) Direct and indirect costs or savings to those affected: No costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.

(b) Reporting and paperwork requirements: Counties would be required to file any reports required by the hearing officer.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Dependent upon the number of appeals, the workload of general counsel's office would increase as well as payments made to the Attorney General's office for the services of the hearing officer.

1. First year: Less than $5000.

2. Continuing costs or savings: Less than $5000.

3. Additional factors increasing or decreasing costs: No other factors.

(b) Reporting and paperwork requirements: Cabinet would be required to file any reports required by the hearing officer.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Hearing procedures outlined in statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation duplicates the hearing procedures outlined in the minimum jail standards.

(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 counties should have access to the same appeal procedures.

FISCAL NOTE ON LOCAL GOVERNMENT

Agency Contact: Doug Sapp/Cheryl Roberts

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes_X_ No___

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation regarding appeals affects the office of the county judge/executive, jailer and county attorney.

3. State the aspect or service of local

government to which this administrative regulation relates. Jail.

4. How does this administrative regulation affect the local government or any service it provides? This regulation outlines the procedures by which counties can appeal orders issued by the Corrections Cabinet.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 9:140. Temporary registration tags issued by county clerks.

RELATES TO: KRS Chapters 186, 186A
STATUTORY AUTHORITY: KRS 186A.100
NECESSITY AND FUNCTION: KRS Chapter 186A allows a county clerk to issue a temporary registration tag to a vehicle registered and titled in another state for which a properly completed application for title and registration has been submitted. The temporary tag may only be issued while the vehicle owner is assembling documents necessary to title or register the vehicle in Kentucky. This administrative regulation prescribes the properly completed application, the records to be maintained by the county clerk and his inability to renew the temporary registration tag.

Section 1. Application. The properly completed application referred to in KRS 186A.100 shall be on the form mandated in KRS 186A.060.

Section 2. Number of Temporary Tags. A county clerk may issue only one (1) thirty (30) day temporary registration tag for a particular vehicle. The temporary registration tag shall not be renewed.

Section 3. County Clerk's Log. (1) The log forms for recording temporary registration tags shall contain the following information:
(a) Tag number;
(b) Person to whom the tag is issued;
(c) Vehicle identification number of vehicle for which the tag is issued;
(d) Expiration date of the tag; and
(e) Name of the county clerk or deputy county clerk who issued the tag.
(2) The county clerk issuing the temporary registration tag shall enter all information required by this administrative regulation in the log. This log shall be made available upon request to officials of the Transportation Cabinet.

MILO D. BRYANT, Secretary
APPROVED BY AGENCY: July 6, 1988
FILED WITH LRC: July 15, 1988 at 9 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 26, 2988 at 1:30 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 21, 1988 so notify: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: 120 county clerks and their deputies.
(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: KRS 186A.105 requires the county clerk to keep a log of the temporary registration tags issued. This regulation sets out the information to be in that log.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Other items were discussed as being needed on the log. However, they were rejected because the items in Section 3 are all that is required to identify both the vehicle and owner.
(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 temporary registration tags should be recorded on the county clerk's log in the same manner. However, the issuance of a temporary registration tag as permitted by KRS 186A.100 is a tiering process in that it allows a person without all the information necessary for titling to be issued a temporary registration.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 20:490. Recruitment plan for position of school media librarian.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes a plan for recruiting

certified classroom teachers into the position of school media librarian.

Section 1. (1) If a fully certified person is not available for the position of school media librarian as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year approval for the assignment of a classroom teacher, subject to the following conditions:

(a)1. A teacher holding a valid classroom teaching certificate for grades K-4, 1-8, or 5-8 may be approved for the position of school media librarian, grades K-8.

2. A teacher holding a valid classroom teaching certificate for grades 5-8, 7-12, or 9-12 may be approved for the position of school media librarian, grades 5-12.

(b) Prior to employment as a media librarian, the applicant shall have completed the nine (9) semester hours of the school media librarian specialization component of the endorsement program outlined in 704 KAR 20:146.

(c) Within the first year of employment, the applicant shall complete an additional nine (9) semester hours within the specialization component to satisfy competencies in the areas of administration and library reference services.

(d) During the first four (4) weeks of the school term, the applicant shall participate in a practicum of one (1) week designed to allow him to demonstrate competencies in administration and organization of school library media programs.

(2) Continuation of the recruitment plan is subject to the following conditions:

(a) The applicant shall complete the required coursework from the endorsement program for school media librarian at a minimum rate of nine (9) semester hours per year.

(b) A letter of request for continuation of the recruitment plan shall be submitted annually by the local school superintendent to the Division of Teacher Education and Certification, Department of Education.

(c) The applicant shall participate in two (2) additional practicum experiences of one (1) week each designed to allow him to demonstrate competencies as stated in the specialization component of the curriculum for the provisional certificate for school media librarian. The total of three (3) weeks of practicum experience during the recruitment plan shall satisfy the practicum requirements for endorsement of an existing certificate.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer
(1) Type and number of entities affected: Approximately 25 individuals currently each year.
(a) Direct and indirect costs or savings to those affected:
1. First year: No additional cost.
2. Continuing costs or savings: No additional cost.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional requirement.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No additional costs.
2. Continuing costs or savings: No additional costs.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional requirement.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Provides for a plan to recruit certified personnel for school position in which a shortage of personnel exists.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Overlaps to some extent with 704 KAR 3:030, Section 2(b).
(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. Entire regulation is a tiered alternative to immediate full certification.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 20:500. Standard certificate for teachers of exceptional children and youth - communication disorders.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes an appropriate certificate and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) The standard certificate for teachers of exceptional children and youth - communication disorders shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005, TEC 120.0

(2) The standard certificate for teachers of exceptional children and youth - communication disorders shall be issued in accordance with the testing and internship provisions of KRS 161.030 and 704 KAR 20:045. Upon successful completion of the beginning teacher internship, the certificate shall be extended for the remainder of a five (5) year period and 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 experience as a teacher of communication disorders 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.

(3) The standard certificate for teachers of exceptional children and youth - communication disorders shall be valid at all age levels for the instruction of exceptional children and youth with communication disorders.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer
(1) Type and number of entities affected: Approximately 50 individuals each year.
(a) Direct and indirect costs or savings to those affected:
1. First year: Tuition costs for completing approximately 30 semester hours of master's level program..
2. Continuing costs or savings: Same as above.
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
(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: Beginning salaries for these individuals would be at Rank 2 on the salary schedule.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Proposed regulations meet the requirements of KRS Chapter 334A.
(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. KRS Chapter 334A requires speech-language pathologists certified after August 1, 1994, to practice in public schools to have master's degree.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 20:510. Recruitment plan for teachers of exceptional children.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of exceptional children.

Section 1. If a fully certified teacher is not available for the position of teacher of exceptional children as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year certificate be issued as provided in this regulation.

(1)(a) A valid classroom certificate or internship statement of eligibility for grades K-4, 1-8, or 5-8 shall be a prerequisite for a one (1) year certificate for learning and behavior disorders, grades K-12; for trainable mentally handicapped, grades K-12; for hearing impaired, grades K-12; and for an endorsement for teaching the visually impaired, grades 1-8. Further, the applicant shall have enrolled in a preparation program in the certification area for which application is being made, and shall have completed the following minimum preparation from the special education component of the approved curriculum:

1. For the 1988-89 academic year, a minimum of six (6) semester hours of credit;

2. For the 1989-90 academic year and thereafter, a minimum of nine (9) semester hours

of credit.

(b) A valid classroom certificate or internship statement of eligibility for grades 7-12 or 9-12 shall be a prerequisite for a one (1) year certificate for learning and behavior disorders, grades 7-12 and for an endorsement for teaching the visually impaired, grades 7-12. Further, the applicant shall have enrolled in a preparation program in the certification area for which application is being made, and shall have completed three (3) semester hours in the teaching of reading and the following minimum preparation from the special education component of the approved curriculum:

1. For the 1988-89 academic year, a minimum of six (6) semester hours of credit;

2. For the 1989-90 academic year and thereafter, a minimum of nine (9) semester hours of credit.

(2) The applicant shall participate in two (2) day workshop to be conducted by the Office of Education for Exceptional Children (OEEC). This workshop shall be conducted during a weekend period, arranged on a regional basis, and offered a minimum of two (2) times during each school year. Participation shall be required at the earliest session scheduled after employment as a teacher of exceptional children.

(3) The applicant shall participate in an additional two (2) day workshop to be conducted by OEEC in conjunction with the OEEC fall conference. Teachers employed after the fall conference shall participate in the spring conference of the Council on Exceptional Children.

Section 2. The renewal of the one (1) year certificate for teachers of exceptional children shall require completion of six (6) semester hours of additional credit from the special education component to be completed by September 1 or the year of expiration.

Section 3. Three (3) years of teaching experience performed under a succession of one (1) year certificates in a full-time position requiring certification for teachers of exceptional children shall be substituted for the special education portion of the student teaching requirement.

Section 4. This regulation shall become effective for those to be certified for the 1988-89 academic year and thereafter.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Akeel Zaheer
(1) Type and number of entities affected: Approximately 200 individuals and school districts where shortages in special education teachers exist.
(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: Application and accompanying support documentation.
(2) Effects on the promulgating administrative body: State Department of Education will provide required training.
(a) Direct and indirect costs or savings:
1. First year: $10,000.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Records on participants in training will need to be maintained.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Training and additional qualifications are needed by teachers who are not fully trained in special education.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Education
(Proposed Amendment)

705 KAR 5:140. Student medical and accident insurance.

RELATES TO: KRS 163.089
PURSUANT TO: KRS 156.070, 163.089
NECESSITY AND FUNCTION: KRS 163.089 authorizes the Superintendent of Public Instruction to provide medical and accident insurance for students enrolled in the state vocational-technical schools and area vocational education centers and requires the State Board of Education to adopt regulations to implement any such insurance program and to set fees and limits of liability with respect to such. This regulation implements such duties.

Section 1. All students enrolled in state vocational-technical schools and area vocational education centers shall have medical and accident insurance coverage during the period of enrollment.

Section 2. The Superintendent of Public Instruction shall enter into a contract with a surety or insurance company or its agent to

provide medical and accident insurance coverage for students enrolled in vocational-technical schools and area vocational centers. The coverage limits shall be at least these amounts:

Accident Medical Expense Maximum - $250,000
(Subject to Exclusions and Limitations)

For loss of use of:
Both arms and both legs.....$50,000
Both legs.....$37,500
One arm and one leg on one side of body..$25,000
One arm or one leg.....$12,500

Section 3. The policy will be a full excess policy and will pay the covered expenses incurred which are in excess of those paid or payable by another plan providing medical expense benefits to a maximum of $250,000.

Section 4. The medical and accident coverage shall consist of a single contract applied to the plan of coverage contained in the contract between the Commonwealth and the carrier.

Section 5. The insurance policy shall be attached to the contract to become part of the medical and accident insurance contract after having been signed by an official of the insuring company having the proper corporate authority to sign this type document.

Section 6. Coverage shall take effect on the date requested and continue to the expiration date shown on the application.

Section 7. At the time of enrollment in a state vocational-technical school or an area vocational education center, each student enrolled shall pay a three (3) dollar insurance fee for the enrollment period or for a school year not to exceed one (1) calendar year.

Section 8. The premium will be paid monthly by the Office of Vocational Education to the surety or insurance company or its agent for the number of students enrolled during the previous month in state vocational-technical schools and area vocational centers.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 24, 1988, at 10 a.m., Eastern Daylight 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 July meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 19, 1988. 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: Paul Jones
(1) Type and number of entities affected: All students enrolled in state vocational-technical schools and area vocational centers.
(a) Direct and indirect costs or savings to those affected:
1. First year: $3 cost per student per year.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Minimum of paperwork required.
(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:
(b) Reporting and paperwork requirements: Very little paperwork required.
(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: To meet the requirements of KRS 163.089.
TIERING: Was tiering applied? No. By requiring all students to buy this insurance assures that all students have adequate coverage. This will be a full excess policy.

LABOR CABINET
Department of Workers' Claims
Workers' Compensation Board

803 KAR 25:080. Workers' compensation rehabilitation procedures.

RELATES TO: KRS Chapter 342
PURSUANT TO: KRS Chapter 13A, 342.260, 342.710
NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such rules and regulations as it considers necessary to carry on its own work and the work of the administrative law judges and for carrying out the provisions of KRS Chapter 342. The function of this proposed administrative regulation is to regulate the provision of rehabilitation services pursuant to KRS 342.710.

Section 1. Definitions. (1) Rehabilitation services include both medical rehabilitation services and vocational rehabilitation services provided pursuant to KRS 342.710. The purpose of rehabilitation services is to help the injured employee accomplish reasonable physical rehabilitation goals and return to suitable gainful employment.
(2) Medical rehabilitation services are those medically oriented services beyond basic medical, surgical and hospital treatment which assist an injured employee in reaching physical rehabilitation goals.
(3) Vocational rehabilitation services are those vocationally related services which help an injured employee resume suitable gainful employment.
(4) Suitable gainful employment means employment which will produce substantial income, and which is reasonably attainable taking into consideration the injured employee's

age, education, previous employment, place of resident and limitations.

(5) A rehabilitation plan is a written proposal prepared by a qualified rehabilitation provider stating the vocational goal to be met, the kinds and costs of services necessary to meet that goal, the names and addresses of the vendors, and a justification for the recommended services. While preparing a rehabilitation plan, the qualified rehabilitation provider shall consider utilization of the employee's transferrable job skills for job placement into suitable gainful employment prior to recommending training.

(6) Qualified rehabilitation provider means an individual who has met the minimum requirements for listing in and is listed in the Registry of Qualified Rehabilitation Providers.

(7) In-house qualified rehabilitation provider means an individual who has met the minimum qualifications for listing in and is listed in the Registry of In-House Qualified Rehabilitation Providers.

(8) Qualified rehabilitation facility or institution means a rehabilitation facility or institution which has met the minimum requirements for listing in and is listed in the Directory of Qualified Rehabilitation Facilities.

(9) Qualified rehabilitation agency means the Office of Vocational Rehabilitation, Department of Education.

Section 2. Responsibilities. (1) The employer/carrier shall provide appropriate rehabilitation services to injured employees in accordance with KRS 342.710 and the administrative regulations of the Workers' Compensation Board.

(2) Injured employees shall be entitled to rehabilitation services to help them accomplish reasonable physical rehabilitation goals and to help them return to suitable gainful employment, and shall be responsible for accepting such services in accordance with KRS 342.710 and the administrative regulations of the Workers' Compensation Board.

(3) It shall be the responsibility of qualified rehabilitation providers, facilities and agencies to provide services within their areas of competencies and to submit such information as is required by the Workers' Compensation Board for registration and monitoring purposes.

Section 3. Application for Listing in Directory of Qualified Rehabilitation Facilities. (1) To apply for listing in the Director of Qualified Rehabilitation Facilities, a rehabilitation facility or institution shall submit an application as provided by the Workers' Compensation Board and such supporting documentation as may be required. Rehabilitation facilities shall also provide such information as may be deemed necessary for monitoring purposes. A qualified rehabilitation facility may be either a freestanding facility or a rehabilitation unit in a general, acute care hospital.

(2) Recognizing that injured employees with significant physical rehabilitation problems may benefit most from a broad range of rehabilitation services administered in an organized, goal oriented, team approach, the Workers' Compensation Board endorses rehabilitation programs which have met strict licensure and accreditation standards.

(3) To assure the availability of the broad range of medical rehabilitation and vocational rehabilitation services necessary pursuant to KRS 342.710, and to facilitate vigorous monitoring of rehabilitation facilities, a qualified rehabilitation facility must meet certain licensure and accreditation requirements.

(4) The facility must be licensed through the Division for Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, to provide inpatient physical rehabilitation services pursuant to 902 KAR 20:016 or 902 KAR 20:240.

(5) The facility must be accredited through the Commission on Accreditation of Rehabilitation Facilities in the following program areas:

(a) Comprehensive inpatient rehabilitation;
(b) Outpatient medical rehabilitation;
(c) Vocational evaluation.

Section 4. Application for Provisional Listing in the Directory of Qualified Rehabilitation Facilities. (1) In order to permit a period of transition for facilities or institutions which may be affected by this policy, provisional listing in the Directory of Qualified Rehabilitation Facilities may be granted by the Workers' Compensation Board to a facility or institution which meets certain licensure and certification requirements.

(2) The facility must be licensed through the Division for Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources to provide inpatient physical rehabilitation services pursuant to 902 KAR 20:016 or 902 KAR 20:240.

(3) The facility must certify to the Workers' Compensation Board in the application process that diligent efforts will be made to obtain accreditation through the Commission on Accreditation of Rehabilitation Facilities in the following program areas within one (1) year from the date of approval as a qualified rehabilitation facility on a provisional basis:

(a) Comprehensive inpatient rehabilitation;
(b) Outpatient medical rehabilitation;
(c) Vocational evaluation.

The Certificate of Qualification issued to a facility on a provisional basis expires one (1) year from the date of approval. However, the Workers' Compensation Board may grant an extension of time upon written request and a determination that diligent efforts have resulted in significant progress toward obtaining the required accredited programs through the Commission on Accreditation of Rehabilitation Facilities.

Section 5. Removal from Directory of Qualified Rehabilitation Facilities. (1) A facility or institution which has been listed in the Directory of Qualified Rehabilitation Facilities but loses any licensure requirement shall immediately be removed from the Directory of Qualified Rehabilitation Facilities.

(2) A facility or institution which has been listed in the Directory of Qualified Rehabilitation Facilities but loses any accreditation requirement may be granted provisional listing in the Directory of Qualified Rehabilitation Facilities upon application and approval by the Workers' Compensation Board.

Section 6. Registry of Qualified Rehabilitation Providers. (1) To apply for listing in the Registry of Qualified Rehabilitation Providers, an individual shall submit an application as provided by the Workers' Compensation Board and submit such supporting documentation as may be required. Qualified Rehabilitation Providers shall also provide such information as may be required for monitoring purposes.

(2) For those applications received within sixty (60) days of the effective date of this regulation, the minimum qualifications for rehabilitation nurses are:

(a) Registered nurse with a current Kentucky license; and

(b) Subsequent employment as a rehabilitation nurse.

(3) For those applications received within sixty (60) days of the effective date of this regulation the minimum qualifications for rehabilitation counselors are:

(a) Doctorate or master's degree in rehabilitation counseling, or related to rehabilitation counseling, as most recently defined by the Commission on Rehabilitation Counselor Certification; or

(b) Baccalaureate degree in rehabilitation counseling, or related area; or

(c) Other baccalaureate degree and subsequent experience as a rehabilitation counselor.

(4) For those applications received sixty-one (61) or more days after the effective date of this regulation, the minimum qualifications for rehabilitation nurses are:

(a) Registered nurse with a current Kentucky license; and

(b) Certification as a certified rehabilitation registered nurse or certified insurance rehabilitation specialist within one (1) year after the education and work experience requirements for certification are met, or one (1) year after the date of application, whichever date is later.

(5) For those applications received sixty-one (61) or more days from the effective date of this regulation, the minimum qualifications for rehabilitation counselors are:

(a) Doctorate or master's degree in rehabilitation counseling, or related to rehabilitation counseling, as most recently defined by the Commission on Rehabilitation Counselor Certification; or

(b) Baccalaureate degree in rehabilitation counseling, or related area; and

(c) Certification as a certified rehabilitation counselor or certified insurance rehabilitation specialist within one (1) year after the education and work experience requirements for certification are met, or one (1) year after the date of application, whichever date is later.

Section 7. Registry of In-House Qualified Rehabilitation Providers. (1) Nothing in this regulation shall prevent self-insured employers or workers' compensation insurance carriers from referring cases to qualified rehabilitation providers on their staff, contingent upon rehabilitation services being provided in accordance with KRS 342.710 and the administrative regulations of the Workers' Compensation Board.

(2) In-house qualified rehabilitation providers shall be subject to the same qualifications and reporting requirements as rehabilitation nurses and rehabilitation counselors listed in the Registry of Qualified Rehabilitation Providers.

(3) A separate Registry of In-House Qualified Rehabilitation Providers shall be maintained by the Workers' Compensation Board.

Section 8. Continuing Education Requirements. (1) The Workers' Compensation Board may, at its discretion, require qualified rehabilitation providers and in-house qualified rehabilitation providers to attend training sessions sponsored by the Workers' Compensation Board at such times and places as may be deemed necessary.

(2) A qualified rehabilitation provider or in-house qualified rehabilitation provider who, without good cause, fails to attend training sessions required by the Workers' Compensation Board, may be removed from the Registry of Qualified Rehabilitation Providers or Registry of In-House Qualified Rehabilitation Providers.

Section 9. Requests for Registration Renewal. (1) By July 15th of each year, qualified rehabilitation providers, and in-house qualified rehabilitation providers who want to continue in those roles shall submit a letter to the Workers' Compensation Board requesting registration renewal. The letter shall also list all pertinent continuing education by title, location, dates, and provider which was completed the previous twelve (12) month period ending June 30. The letter shall also list by name, address, telephone number, social security number, and Workers' Compensation Board file number all workers' compensation claimants who were served during that same time period.

(2) A qualified rehabilitation provider who, without good cause, fails to submit a request for registration renewal with all required information, may be removed from the Registry of Qualified Rehabilitation Providers or Registry of In-House Qualified Rehabilitation Providers.

Section 10. Removal from Registry of Qualified Rehabilitation Providers, or Registry of In-House Qualified Rehabilitation Providers. (1) In the event of evidence of a violation of the Workers' Compensation Board's rules and regulations, or receipt of a written complaint against a qualified rehabilitation provider or in-house qualified rehabilitation provider, he shall be notified in writing of the alleged rule violation or nature of the complaint.

(2) Within ten (10) days of receipt of the notice, he shall file a written response.

(3) If it is determined that further investigation is required, a hearing shall be scheduled. After reviewing the evidence, an administrative law judge may issue an order dismissing the complaint, placing the qualified rehabilitation provider, or in-house qualified rehabilitation provider on probation, or revoking his registration.

(4) Any appeal from the order of the administrative law judge shall be governed by procedures applicable to appeals from the order of administrative agencies generally.

(5) A qualified rehabilitation provider or in-house qualified rehabilitation provider may reapply for registration after 180 days from the date of revocation.

Section 11. Provision of Rehabilitation

Services. (1) It shall be the responsibility of the employer/carrier to identify injured employees who may benefit from rehabilitation services and to provide appropriate rehabilitation services pursuant to KRS 342.710 and the administrative regulations of the Workers' Compensation Board.

(2) In their selection of individuals to whom they must refer injured employees for coordination of medical rehabilitation services and vocational rehabilitation services, the employer/carrier shall be limited to qualified rehabilitation providers listed in the Registry of Qualified Rehabilitation Providers or Registry of In-House Qualified Rehabilitation Providers.

(3) The types of services to be provided by qualified rehabilitation providers include, but are not limited to:

(a) Assessment of current level of medical care and needs;

(b) Discharge planning, follow-up services, and assessment of future rehabilitation needs;

(c) Assessment of need for referral for medical rehabilitation services;

(d) Serving as liaison between physicians, patient, family, employer/carrier, attorney;

(e) Assessment of home modification and vehicle modification requirements;

(f) Arrangements for transfers, attendant care, medical supplies and equipment;

(g) Patient and family education regarding the employee's injury;

(h) Medical clarification and general coordination of medical rehabilitation services;

(i) Vocational evaluation;

(j) Vocational counseling;

(k) Job analysis;

(l) Job modification;

(m) Job placement;

(n) Referral for diagnostic vocational and psychological testing;

(o) Determining vocational goals and writing rehabilitation plans outlining services and costs needed to attain that goal;

(p) General coordination of vocational services.

(4) In order to retain control over the costs of rehabilitation, the employer/carrier representative may establish guidelines for services to be provided by qualified rehabilitation providers and may reassign cases from one qualified rehabilitation provider to another at his discretion.

(5) All medical rehabilitation services shall be provided at a qualified rehabilitation facility listed in the Directory of Qualified Rehabilitation Facilities.

Section 12. Referral of Catastrophic Injury Cases. (1) Any case other than catastrophic injury cases may be referred to a qualified rehabilitation provider at any time for routine coordination of medical and vocational services. However, in catastrophic injury cases, the employer/carrier shall refer the injured employee to a rehabilitation nurse listed in the Registry of Qualified Rehabilitation Providers or Registry of In-House Qualified Rehabilitation Providers within fifteen (15) days of knowledge of such an injury.

(2) Referral of catastrophic injury cases shall be made on a form provided by the Workers' Compensation Board, a copy of which shall be sent to the Workers' Compensation Board by the claim manager.

(3) Catastrophic injury cases include:

(a) Spinal cord injuries;

(b) Amputation of a hand or foot;

(c) Severe brain or closed head injuries;

(d) Blindness;

(e) Second or third degree burns over twenty-five (25) percent or more of total body surface, or third degree burns to twenty-five (25) percent or more of face or hands;

(f) Other injuries or conditions expected to result in need for substantial medical rehabilitation services beyond acute care hospitalization.

(4) Within seven (7) days of receipt of a catastrophic injury case, the rehabilitation nurse shall make an initial report to the claim manager on a form provided by the Workers' Compensation Board, a copy of which shall be sent to the Workers' Compensation Board by the rehabilitation nurse. The initial report shall summarize the current level of medical care and needs, and the long-term medical and physical rehabilitation needs. Copies of subsequent written reports to the claim manager shall be sent to the Workers' Compensation Board by the rehabilitation nurse.

(5) The rehabilitation nurse shall submit a final report to the employer/carrier on a form provided by the Workers' Compensation Board, a copy of which the rehabilitation nurse shall send to the Workers' Compensation Board, which shall summarize the types of services provided and the total charges billed to the employer/carrier. The rehabilitation nurse shall not bill for time or expenses related to completing and submitting forms and reports required by the Workers' Compensation Board.

Section 13. Referral of Ninety (90) Day Lost Time Cases. (1) In all cases in which an injured employee has not been referred to a qualified rehabilitation provider at an earlier date, then within seven (7) days after an injured employee has ninety (90) days of temporary total disability, the employer/carrier shall submit a report to the Workers' Compensation Board on a form supplied by the Workers' Compensation Board which will indicate:

(a) The name, address and telephone number of the qualified rehabilitation provider to whom the case has been assigned; or

(b) States that, following maximum medical improvement, the injured employee will be able to resume his usual customary employment or other suitable gainful employment; or

(c) States the injured employee is so seriously impaired as to be unable to benefit from vocational rehabilitation services; or

(d) States the injured employee voluntarily elects not to be referred to a qualified rehabilitation provider due to retirement plans; or

(e) Other (explain).

(2) The assertion of the employer/carrier of the injured employee's ability to return to work following maximum medical improvement, or inability to benefit from vocational rehabilitation services due to the severity of his impairment, shall be supported by an attached statement from the employee's treating or examining physician.

Section 14. Referral of Other Cases. (1) If in addition to catastrophic injury cases and ninety

(90) day lost time cases, the employer/carrier elects to voluntarily refer other cases for coordination of medical or vocational services or for medical clarification, such cases shall be referred only to qualified rehabilitation providers.

(2) The employer/carrier shall make such referrals on a form provided by the Workers' Compensation Board and shall submit a copy to the Workers' Compensation Board within seven (7) days of case assignment.

Section 15. Limitations on Duties of Qualified Rehabilitation Providers. (1) On any case to which an individual is assigned as a qualified rehabilitation provider, he shall be prohibited from performing any claims investigation or claims adjusting functions such as, scheduling medical, vocational, or rehabilitation evaluations for the purpose of securing adverse testimony or discussing settlements.

(2) Qualified rehabilitation providers shall not interpret workers' compensation law for injured employees other than to explain the role of qualified rehabilitation providers and to discuss rehabilitation services and procedures pursuant to KRS 342.710 and administrative regulations for workers' compensation rehabilitation procedures.

(3) Absent the written permission of the physician, chiropractor, osteopath, psychologist, or other medical personnel and the injured employee, the qualified rehabilitation provider shall not be present in the examination area or treatment area during examination or treatment of the injured employee.

Section 16. Supplemental Report by the Employer/Carrier. (1) In the event an injured employee previously designated by the employer/carrier as likely to return to suitable gainful employment following maximum medical improvement has not done so within 180 days of temporary total disability, the employer/carrier shall within seven (7) days thereafter submit a supplemental report to the Workers' Compensation Board stating the name and address of the qualified rehabilitation provider to whom the employee has been referred, or a statement from the employee's treating physician describing the employee's current condition and likelihood of returning to suitable gainful employment.

(2) For those employees still designated as likely to return to suitable gainful employment following maximum medical improvement, subsequent supplemental reports shall be submitted by the employer/carrier every ninety (90) days thereafter.

Section 17. Submission of Rehabilitation Plan by Qualified Rehabilitation Provider. (1) If the qualified rehabilitation provider determines the injured employee is unlikely to return to suitable gainful employment without the intervention of vocational rehabilitation services, he shall submit a rehabilitation plan to the employer/carrier listing the vocational goal to be met, the kinds and costs of services necessary to meet that goal, the names and addresses of the vendors, and a justification for the recommended services.

(2) Within thirty (30) days of receipt of the referral, the qualified rehabilitation provider shall submit a rehabilitation plan to the employer/carrier on a form provided by the Workers' Compensation Board, and the qualified rehabilitation provider shall send a copy to the Workers' Compensation Board.

(3) The rehabilitation plan, and the copy to the Workers' Compensation Board, shall be accompanied by copies of medical, psychological, and vocational evaluation reports on which the vocational goal is based. Labor market information documenting a reasonable chance for successful placement shall be included. The medical and psychological reports shall expressly state the permanent physical and psychological restrictions under which the employee is placed.

(4) If additional services not listed on the original rehabilitation plan become necessary, the qualified rehabilitation provider shall submit rehabilitation plan amendments to the employer/carrier representative for his approval. Rehabilitation plan amendments shall have the same format and requirements as the original rehabilitation plan, including submission of copies to the Workers' Compensation Board.

(5) Medical, surgical, hospital treatment, medical rehabilitation services, supplies and appliances normally required for the cure or relief of the effects of occupational injuries and diseases shall not be included in rehabilitation plans or rehabilitation plan amendments.

(6) Rehabilitation plans and rehabilitation plan amendments shall include any specific diagnostic medical, psychological, and vocational testing and evaluation necessary to determine a vocational goal, and any specific vocational rehabilitation service needed to attain that goal, such as counseling, job placement, job analysis, job modification, training, and related costs. Rehabilitation plans and rehabilitation plan amendments shall be signed by the qualified rehabilitation provider proposing the services, by the injured employee, and by the employer/carrier representative authorizing the services.

(7) Copies of all rehabilitation plans and rehabilitation plan amendments shall be supplied to the injured employee by the qualified rehabilitation provider.

Section 18. Submission of Progress Reports by Qualified Rehabilitation Provider. (1) In the event a rehabilitation plan cannot be developed within thirty (30) days, then in lieu of the rehabilitation plan, the qualified rehabilitation provider shall submit a progress report to the employer/carrier, on a form provided by the Workers' Compensation Board, summarizing activities, problems, and progress, a copy of which the qualified rehabilitation provider shall send to the Workers' Compensation Board.

(2) Such progress reports shall be submitted every thirty (30) days until a rehabilitation plan is submitted and every sixty (60) days thereafter until the injured employee returns to work, or until vocational rehabilitation services are discontinued.

(3) Copies of all progress reports shall be supplied to the employee by the qualified rehabilitation provider.

Section 19. Submission of Final Report by Qualified Rehabilitation Provider. (1) The qualified rehabilitation provider shall submit a

final report to the employer/carrier on a form provided by the Workers' Compensation Board, a copy of which shall be sent by the qualified rehabilitation provider to the Workers' Compensation Board, which shall include a description of the job to which the injured employee has returned, his rate of pay, the name and address of the employer, or the reason vocational rehabilitation services were discontinued, and such other information as may be required.

(2) The final report shall include the total costs of vocational rehabilitation services by category and vendor, such as: tuition, books, fees, room, board, and transportation, and any other categories required by the Workers' Compensation Board. The final report shall also include a summary of the services provided by the qualified rehabilitation provider and the total charges billed to the employer/carrier by the qualified rehabilitation provider.

(3) The final report shall be submitted within thirty (30) days of case closure and final billing. The qualified rehabilitation provider shall not bill for time or expenses related to completing and submitting forms and reports required by the Workers' Compensation Board. A copy of the final report shall be provided to the employee by the qualified rehabilitation provider.

Section 20. Written Request for Rehabilitation Services. (1) In the event the employer/carrier fails to refer an injured employee for rehabilitation services pursuant to KRS 342.710 and the administrative regulations for workers' compensation rehabilitation procedures, the injured employee, or anyone on his behalf, may file a written request for rehabilitation services.

(2) If the dispute cannot be resolved voluntarily, interlocutory relief may be sought by filing a Form 101 or Form 102.

Section 21. Dispute Resolution. (1) Any dispute involving the provision or acceptance of rehabilitation services that cannot be resolved without a formal hearing process shall be resolved according to the procedures in KRS 342.710(3).

(2) In the event a dispute regarding rehabilitation arises prior to the filing of an application for adjustment of claim, the aggrieved party may file a Form 101 or Form 102 to seek interlocutory relief.

Section 22. Forms. Forms R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, R11, R12, R13, and R14 are hereby adopted by reference.

ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: July 1, 1988

FILED WITH LRC: July 1, 1988 at 3 p.m.

PUBLIC HEARING SCHEDULED: Public hearing will be held at the Capitol Plaza Tower, Ground Floor Auditorium, 10:30 a.m., August 22, 1988. Agency contact: Glenn L. Schilling, Commissioner.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Glenn L. Schilling

Summary of proposed regulation: Regulation No. 803 KAR 25:080 will determine procedures to be used in Workers' Compensation Rehabilitation matters by the Workers' Compensation Board of the Department of Workers' Claims. This regulation does not replace a previous regulation.

(1) Type and number of entities affected: The regulation will affect employees, employers, self-insured employers, Special Fund, and Uninsured Employers Fund and attorneys representing these entities. The procedures will especially affect seriously injured workers, for example, spinal cord severance cases.

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

1. First year: As the procedures set forth in this new regulation are tested, attorney costs may increase. This should be of brief duration. The amount of the increase cannot be estimated.

2. Continuing costs or savings: Long term, it is anticipated that the new procedures will lower the costs of adjudicating workers' compensation claims and will effectively return injured employees to work who would otherwise not have been capable of returning to gainful employment. The effect will be to offset some of the costs.

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

(b) Reporting and paperwork requirements: The new system may result in more paperwork for attorneys. Efforts to combat this have resulted in essential rehabilitation forms which will be furnished free of charge by the Department of Workers' Claims:

1 form to be filed by qualified rehabilitation facility; 4 forms to be filed by employer/carrier; 5 forms to be filed by qualified rehabilitation providers; 1 certificate to be issued by the Workers' Compensation Board; 1 directory to be maintained by Workers' Compensation Board; 2 registries to be maintained by Workers' Compensation Board.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: As mandated by statute, the new system is more costly than the old; however, the administrative regulation does not result in greater costs over and above those mandated by statute.

2. Continuing costs or savings: The new administrative regulation is not responsible for the continued higher cost of the program.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Reporting will not be affected. The department's paperwork will increase but is impossible to estimate by how much.

(3) Assessment of anticipated effect on state and local revenues: There should be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Since the new procedures were required by statute, no alternatives were possible.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No such statute, administrative regulation or governmental policy is known.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not appropriate since there are no multiple classes involved. Each employee and employer is equally entitled to due process protections and so deserves all of the protections and freedoms included in the regulation.

Federal Mandate Comparison: There is no federal mandate to compare since workers' compensation is totally controlled by state statutes.

COMPILER'S NOTE: The forms in Appendix A required by this regulation may be reviewed in and copies obtained from the office of the Regulations Compiler.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 3:130. Liability insurance closed claims reporting.

RELATES TO: KRS 304.3-245
PURSUANT TO: KRS 304.2-110, 304.3-245
NECESSITY AND FUNCTION: KRS 304.2-110 authorizes the Commissioner of Insurance to establish regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.3-245 requires the Commissioner of Insurance to adopt regulations setting out the manner and form in which closed claims reports shall be made. This regulation establishes the manner and form in which closed claims reports required by KRS 304.3-245 shall be made.

Section 1. (1) All insurers authorized to transact casualty insurance in Kentucky shall develop, maintain, and report to the Commissioner of Insurance as an exhibit to its annual statement, the information required by the Commissioner of Insurance relating to each bodily injury liability claim made against it or its insured by any person who has sustained bodily injury from an accident occurring within Kentucky. The reports required by this section shall be filed with the 1988 annual statement and shall include only claims closed from July 15, 1988, through December 31, 1988. Following the reports required with the 1988 annual statement, closed claims shall be reported within thirty (30) days after the end of the calendar quarter in which claims are closed.

(2) The reports required by this section shall be made in accordance with forms and instructions which are Appendix A to this regulation.

(3) All insurers subject to this regulation shall maintain the records necessary to provide the reports required by this section.

Section 2. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

LEROY MORGAN, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: July 11, 1988
FILED WITH LRC: July 14, 1988 at 1 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on August 22, 1988, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing must notify the department in writing by August 17, 1988, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person in attendance will be given an opportunity to comment on the proposed regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. All persons in attendance at the hearing will receive a copy of the statement of consideration arising from the public hearing. If a person does not attend the public hearing, that person may submit written comments on the proposed administrative regulation. Written comments will be given consideration equal to that given to comments made at the public hearing. Written comments must be received on or before August 22, 1988, at 4:30 p.m. (ET) in order to receive consideration. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation must be sent to Patrick Watts, Acting General Counsel, Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601, (502) 564-6036.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patrick Watts
Need for the Proposed Regulation: KRS 304.3-245 1988 Ky. Acts c. 225, Section 11) requires the Commissioner of Insurance to adopt administrative regulations setting out the manner and form in which the closed claim reports required by that section are to be made. Generally, the proposed regulation establishes three levels of reporting based on the dollar amounts of claims. The greater the amount of the claim, the more detailed the reporting required.
(1) Type and number of entities affected: The proposed regulation will apply to approximately 600 insurers authorized to transact liability insurance in Kentucky.
(a) Direct and indirect costs or savings to those affected:
1. First year: The costs of the regulations are imposed by KRS 304.3-245, not the Department of Insurance. The Department has attempted to implement the legislation in a manner which reduces costs. One large insurer stated that it would cost it approximately $378,900 to make these reports, but if the reporting system used by the proposed regulation is used, savings of approximately $76,000 will be realized, meaning that annual costs for the insurer are approximately $302,000.
2. Continuing costs or savings: As noted above, one large insurer estimated that it would be approximately $302,000 per year to comply with the statute. These costs are imposed by the statute, not the Department of Insurance.
3. Additional factors increasing or decreasing costs (note any effects upon competition): The department has attempted to utilize those items of information which are readily available to insurers. This should assist in minimizing costs.
(b) Reporting and paperwork requirements: None. Reporting and paperwork requirements are imposed by KRS 304.3-245, not the Department of Insurance. As noted above, the department is attempting to utilize information readily

available to insurers in order to reduce the burdens of reporting and paperwork.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: KRS 304.3-245 imposes substantial costs for equipment, electronic data processing programming, and personnel on the Department of Insurance. Precise figures are unknown.
2. Continuing costs or savings: The cost of the legislation will be less in subsequent years because the basic systems will be in place.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: By utilizing information readily available to insurers, it is anticipated that the burden of reporting and paperwork requirements imposed by KRS 304.3-245 will be lessened.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Several systems of reporting were considered. The proposed regulation presents a system somewhat similar to that implemented by Texas. Other systems used more extensive reporting and were rejected due to increased costs imposed upon the Department and upon licensees.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The reporting requirement of KRS 304.3-245 is duplicated or overlapped by another statutorily required reporting mechanism, the liability and health insurance statistical reports required by KRS 304.3-315.
(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? Tiering was applied to the proposed regulation.

COMPILER'S NOTE: The forms in Appendix A required by this regulation may be reviewed in and copies obtained from the office of the Regulations Compiler.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 3:140. Liability and health insurance statistical reports.

RELATES TO: KRS 304.3-315
PURSUANT TO: KRS 304.2-110, 304.3-315
NECESSITY AND FUNCTION: KRS 304.2-110 authorizes the Commissioner of Insurance to adopt regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.3-315 requires the Commissioner of Insurance to prescribe by regulation a reporting form for the reports required by KRS 304.3-315. This regulation prescribes the reporting form for KRS 304.3-315.

Section 1. All insurers authorized to transact liability and health insurance in Kentucky shall file the report set forth in Appendix A with the Commissioner of Insurance and the Legislative Research Commission by March 1 of each year for the immediately preceding calendar year.

Section 2. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

LEROY MORGAN, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: July 12, 1988
FILED WITH LRC: July 14, 1988 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 22, 1988, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing must notify the department in writing by August 17, 1988, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person in attendance will be given an opportunity to comment on the proposed regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. All persons in attendance at the hearing will receive a copy of the statement of consideration arising from the public hearing. If a person does not attend the public hearing, that person may submit written comments on the proposed administrative regulation. Written comments will be given consideration equal to that given to comments made at the public hearing. Written comments must be received on or before August 22, 1988, at 4:30 p.m. (ET) in order to receive consideration. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation must be sent to Patrick Watts, Acting General Counsel, Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601, (502) 564-6036.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patrick Watts
Need for the Proposed Regulation: HB 361 (1988 Ky. Acts c. 114) creates KRS 304.3-315, which requires the Commissioner of Insurance to prescribe by regulation a uniform form to be used for the reports required by KRS 304.3-315.
(1) Type and number of entities affected: The proposed regulation will affect approximately 1200 insurers authorized to transact liability and health insurance in Kentucky.
(a) Direct and indirect costs or savings to those affected:
1. First year: None. All costs are imposed by KRS 304.3-315.
2. Continuing costs or savings: None. All costs are imposed by KRS 304.3-315.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None. All costs or effects on competition are created by KRS 304.3-315.
(b) Reporting and paperwork requirements: Reporting and paperwork requirements are imposed by KRS 304.3-315.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None. All costs are imposed by KRS 304.3-315.
2. Continuing costs or savings: None. All

costs are imposed by KRS 304.3-315.

3. Additional factors increasing or decreasing costs: None. All costs are imposed by KRS 304.3-315.

(b) Reporting and paperwork requirements: None. Reporting and paperwork requirements are created by KRS 304.3-315.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 304.3-315 requires a reporting form to be prescribed, and, therefore, there is no alternative to prescribing a reporting form. KRS 304.3-315(1) requires a reporting form to be itemized by a line of insurance as an "addendum" to insurer annual reports. Therefore, it was necessary to set out each item required to be reported and the lines of business as described in the annual statement blank.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 304.3-315 duplicates or overlaps the functions of reports required under KRS 342.382 (workers' compensation statistical reports) and 304.3-245 (closed claim reports). However, since KRS 304.3-315 requires that the department adopt a regulation prescribing the reporting form, the department is not able to avoid the duplication and overlapping of functions.

(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? Tiering was not applied because KRS 304.3-315 requires a report from all insurers authorized to transact liability or health insurance.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 4:010. Fees of the Department of Insurance.

RELATES TO: KRS 304.4-010

STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010

NECESSITY AND FUNCTION: KRS 304.2-110 authorizes the Commissioner of Insurance to adopt regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the Commissioner of Insurance to prescribe those services for which fees shall be charged and the amounts of the fees. This regulation prescribes these services for which the Department of Insurance will charge fees and the amounts of those fees.

Section 1. The commissioner shall collect in advance fees as follows:

(1) Annual statement.

(a) Filing each year, $100.

(b) Filing additional or supplemental statement in the same year, $100.

(2) Filing charter documents.

(a) Original charter document, bylaws, and records of organization, or certified copies thereof required to be filed, $100.

(b) Amended charter documents, bylaws, and records of organization, or certified copies thereof required to be filed, $50.

(3) Certificate of authority.

(a) Issuance of original certificate, $500.

(b) Amending, to add a line, $50.

(c) Renewal, each year, $100.

(4) Organization of domestic mutual insurers: filing application for solicitation permit and issuance of such permit, $200.

(5) Self insurer.

(a) Application to become self insurer under subtitle 39, $200.

(b) Notification of self-insurance program under subtitle 32, $50.

(6) Agent licenses, foreign and alien insurers.

(a) Agent license, per insurer represented, biennial, $40.

(b) Temporary license as agent, $20.

(c) Nonresident agent, per insurer represented, biennial, $50.

(d) Resident corporate or partnership agent, per insurer represented, biennial, $100.

(e) Nonresident corporate or partnership agent, per insurer represented, biennial, $120.

(7) Surplus lines broker or managing general agent, biennial, $100.

(8) Solicitor license, biennial, $40.

(9) Adjuster license, biennial, $50.

(a) Temporary license as apprentice adjuster, $25.

(b) Administrator's license, biennial, $50.

(10) Consultant license, biennial, $100.

(11) Agent licenses for fraternal benefit societies, subtitle 32 corporations, health maintenance organizations, prepaid dental plan organizations, per fraternal benefit society, subtitle 32 corporation, health maintenance organization, or prepaid dental plan represented, biennial.

(a) Residents, $40.

(b) Nonresidents, $50.

(12) Filing agent and solicitor continuing education courses for approval, $5 per hour of continuing education credit; minimum of $10.

(13) Late renewal of agent licenses pursuant to KRS 304.9-260, 304.32-190, 806 KAR 38:020, 806 KAR 43:010, and KRS 304.99-100, per insurer, subtitle 32 corporation, health maintenance organization, or prepaid dental plan organization represented.

(a) Residents, $40.

(b) Nonresidents, $50.

(14) Examination for or in connection with licensing of agents, solicitors, adjusters, and consultants, $50.

(15) Annual registration fee of unauthorized insurer under KRS 304.11-020(2), $500.

(16) Advisory organizations.

(a) Application for license, $500.

(b) Annual renewal, $100.

(17) Rate and form filings.

(a) Rate level revision filing in a noncompetitive market or other rate level revision filings subject to prior approval by the commissioner, $100.

(b) Credit life or health insurance filing requiring review for compliance with KRS 304.19-080, $100.

(c) Other rate and form filings, $5.

(18) Insurance premium finance companies.

(a) Application for license, $500.

(b) Annual renewal, $100.

(19) Cost of administering subtitle 32 per membership contract in force on December 31 of each year, except the health insurance contract or contracts for state employees as authorized

by KRS 18A.225, ten (10) cents.
(20) Miscellaneous services.
(a) Filing other documents, each, $5.
(b) Commissioner's certificate under seal, other than certificates, licenses, and other documents provided for above, each, $5.
(c) For copies of any document on file with the commissioner, per page, fifty (50) cents.
(d) Copy of annual statements, per page, $1.
(e) Computer printouts or computer printouts of mailing labels, per page, $2.

Section 2. The biennial renewal fees specified in Section 1(6), (7), (8), (9), (10), and (11) of this regulation are payable as follows:
(1) Licensees for life, health, life and health insurers, or fraternal benefit societies shall renew their licenses on or before March 31 in odd numbered years and biennially thereafter; and
(2) Licensees for casualty, marine and transportation, property, surety, mortgage guaranty, or multiple line insurers shall renew their licenses on or before March 31 in even numbered years and biennially thereafter.

Section 3. When a statute or regulation requires payment of a fee as provided in KRS 304.4-010, it refers to a fee as specified in this regulation.

Section 4. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

LEROY MORGAN, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: July 7, 1988
FILED WITH LRC: July 15, 1988 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on August 22, 1988, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing must notify the department in writing by August 17, 1988, of their intent to attend the public hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person in attendance will be given an opportunity to comment on the proposed regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. All persons in attendance at the hearing will receive a copy of the statement of consideration arising from the public hearing. If a person does not attend the public hearing, that person may submit written comments on the proposed regulation. Written comments will be given consideration equal to that given to comments made at the public hearing. Written comments must be received on or before August 22, 1988, at 4:30 p.m. (ET) in order to receive consideration. Written notification of intent to attend the public hearing or written comments on the proposed regulation must be sent to: Patrick Watts, Acting General Counsel, Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601, (502)564-6036.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patrick Watts
Need for the proposed regulation: Section 25 of HB 552 requires the Commissioner of Insurance to prescribe by regulation the fees charged by the commissioner and the services for which fees shall be charged. The fees prescribed in this regulation are substantially identical to those contained in the prior version of KRS 304.4-010. For a discussion of the differences in the former statute and proposed regulation are discussed below under the assessment of anticipated effect on state and local revenues.
Type and number of entities affected: The proposed regulation will apply to approximately 42,000 licensees of the Department of Insurance. These licensees include insurers, agents, solicitors, consultants, adjusters, surplus lines brokers, insurance premium finance companies, advisory organizations, etc.
a. Direct and indirect costs or savings to those affected:
1. First year: See discussion below of assessment of anticipated effect on state and local revenues.
2. Continuing costs or savings: See discussion below of assessment of anticipated effect on state and local revenues.
3. Additional factors increasing or decreasing costs: See discussion below of assessment of anticipated effect on state and local revenues.
b. Reporting and paperwork requirements: None. Reporting and paperwork requirements are imposed by other statutes or regulations requiring filings or other activities relating to the Department of Insurance.
Effects on the promulgating administrative body:
a. Direct and indirect costs or savings:
1. First year: See the discussion below of the assessment of anticipated effect on state and local revenues.
2. Continuing costs or savings: See discussion below on the assessment of anticipated effect on state and local revenues.
3. Additional factors increasing or decreasing costs: See discussion below of assessment of anticipated effect on state and local revenues.
b. Reporting and paperwork requirements: Statutes requiring implementation of a different fee schedule will cause some confusion. It is anticipated that the department will receive filings accompanied by incorrect fees. This will generate paperwork necessary to correct the fees accompanying these filings.
Assessment of anticipated effect on state and local revenues: The fees provided in the proposed regulation are substantially identical to those charged under the prior version of KRS 304.4-010. The changes and fees are intended to maintain the current level of funding of the Department of Insurance or correct technical matters. The Department of Insurance is funded through the insurance regulatory trust fund created by KRS 304.2-400 to 304.2-430. All payments received under KRS 304.4-010 are credited to the insurance regulatory trust fund. Fund balances in excess of $500,000 ($2,000,000 after July 15, 1988) lapse to the general fund. Thus, maintenance of the level of fees received under KRS 304.4-010 is of importance not only to the department, but also to the general fund. The higher fees charged to corporate or partnership agents under Section 1(6)(d) and (e) are needed to maintain the current level of funds the department receives from insurance agent appointments. Prior to July 15, 1982, KRS 304.9-130(1) required insurers to pay an

additional appointment fee for every individual person designated under a corporate or partnership insurance agent license. In 1982, this requirement was eliminated. Over the years, many insurers continued to pay individual appointment fees for persons designated under corporate or partnership agent licenses. However, many insurers have recently decided to cease paying appointment fees for individuals designated under corporate or partnership agent licenses and pay appointment fees only for the corporation or partnership. For example, a group of five insurers recently notified the department of those agents whose appointments it would be renewing and it renewed relatively few individual agents as opposed to corporate or partnership agents. If all individual agents designated under the corporate or partnership licenses had been individually appointed and fees paid for those appointments, the department would have received approximately $47,000. However, because the insurer decided to appoint only the corporations or partnerships, the department received only about $16,000, a loss of $31,000. The loss from insurers appointing only corporate or partnership agents and not the individuals designated under corporate or partnership licenses is conservatively estimated to be $500,000 of the next two years. By increasing the corporate or partnership agent appointment fee to $100, it is anticipated that the department will receive approximately $800,000 over the next two years to replace the revenue lost when insurers stopped appointing individuals designated under corporate or partnership licenses. The biennial fee for an insurance consultant license has been increased in Section 1(10) to $100 biennially. This increase was adopted because an insurance consultant is a highly qualified person with substantial earning power because this license authorizes the licensee to charge fees to members of the public for giving insurance advice. Also, this fee is more in line with the fee charged to surplus lines brokers and managing general agents (see Section 1(7)), who are also highly qualified people. Section 1(13) includes a fee charged under the prior version of KRS 304.4-010 for late renewal of insurance agent appointments. KRS 304.9-260 requires insurers to notify the department of the agents whose appointments it will be renewing. The department must receive this notice by March 31, but if the notice is received between March 31 and the next following June 30, the commissioner may, in his discretion, accept the notice if the insurer pays a double fee. The difference between the proposed regulation and the prior version of KRS 304.4-010 is that the regulation will require not only foreign and alien insurers to pay the penalty fee, but domestic insurers will also be required to pay the fee. Of course, this fee will be less in the case of domestic insurers due to the exemption in Section 1(6). Section 1(17) continues the rule that rate filings in a noncompetitive market must be accompanied by a $100 fee and that all other rate and form filings must be accompanied by a fee of $5. However, the proposed regulation also imposes a $100 fee for any rate filing subject to prior approval must also be accompanied by a fee of $100. Section 9 of HB 552 amended KRS 304.13-051 to create a system of "flex rating" under which any property or casualty insurance rate filing which contains a rate increase of decrease of more than 25% must be approved by the commissioner before it can be put into use. These are the main types of filings which will be subject to the $100 fee. The proposed regulation also imposes a $100 filing fee for credit life or health insurance filings requiring review for compliance of KRS 304.19-080. This statute sets credit life and health insurance rates and every filing under this statute must be reviewed by the department's consulting actuary to assure that the statutorily required rates are being used. Section 1(18) of the proposed regulation provides for an application fee of $500 and an annual renewal fee of $100 for insurance premium finance company licenses. Under the prior version of KRS 304.4-010, this fee was $100 for both application and annual renewal. Since the fee for applying for certificate of authority as an insurer or a license as an advisory organization is $500 for initial application and $100 for annual renewal, it is appropriate that the application and renewal fees for insurance premium finance company licenses match those fees. However, this provision is not expected to produce substantial revenue because only one or two applications for licenses as insurance premium finance companies are received in a year.

Assessment of alternative methods; reasons why alternatives were rejected: As noted above, a major concern was the loss of revenue due to the fact that insurers have ceased appointing individuals designated under corporate or partnership licenses. One method the department considered in maintaining the level of revenue was to increase the appointment fees charged to all agents (Section 1(6)) by $10. However, this would have resulted in a revenue gain far in excess of the amount needed to maintain the current level of funding. Therefore, that alternative was rejected.

Statutes, regulations, or governmental policies which may conflict, overlap, or duplicate the proposed regulation: None.

TIERING: Tiering was applied to this regulation.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance

806 KAR 13:110. Rate standards for property and casualty insurance "flex rating".

RELATES TO: KRS 304.13-051

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation prescribes the rate standards which must be met by property and casualty insurance rate filings subject to the "flex rating" provisions of KRS 304.13-051.

Section 1. Property and casualty insurance rates subject to prior approval by the Commissioner of Insurance under KRS 304.13-051(5)(b) shall be made in accordance with the following provisions:

(1) Manual, minimum, class rates, rating schedules, or rating plans shall be made and adopted, except in the case of specific inland marine rates on risks specially rated;

(2) Rates shall not be excessive, inadequate, or unfairly discriminatory; and

(3) Due consideration shall be given:

(a) To past and prospective loss experience within and outside this state;

(b) To conflaguration and catastrophe hazards;

(c) To a reasonable margin for underwriting profit and contingency;

(d) To dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(e) To past and prospective expenses, both countrywide and those specially applicable to this state;

(f) To all other relevant factors within and outside this state; and

(g) In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during a period of not less than the most recent three (3) year period for which such experience is available;

(4) The systems of expense provisions included in the rates for use by insurer or group of insurers may differ from those of other insurers or group of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable; and

(5) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks which may have a probable effect upon losses or expenses.

Section 2. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

LEROY MORGAN, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: July 7, 1988
FILED WITH LRC: July 15, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 22, 1988, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing must notify the department in writing by August 17, 1988, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person in attendance will be given an opportunity to comment on the proposed regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. All persons in attendance at the hearing will receive a copy of the statement of consideration arising from the public hearing. If a person does not attend the public hearing, that person may submit written comments on the proposed administrative regulation. Written comments will be given consideration equal to that given to comments made at the public hearing. Written comments must be received on or before August 22, 1988, at 4:30 p.m. (ET) in order to receive consideration. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation must be sent to Patrick Watts, Acting General Counsel, Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601, (502) 564-6036.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patrick Watts

Need for the Proposed Regulation: The proposed regulation is necessary to provide standards for rate filings subject to the "flex rating" provisions of KRS 304.13-051. Section 9 of HB 552 (1988 Ky. Acts c. 9) provides that no property and casualty insurance rate filing causing an increase or decrease of more than 25% may be implemented unless it is approved by the Commissioner of Insurance. However, the General Assembly failed to provide standards to be met by such rate filings. The regulation provides standards and is substantially identical to KRS 304.13-031, which provides standards for rates in a noncompetitive market. Further, the standards are those which, traditionally, have been applied to property and casualty insurance rates which are subject to prior approval.

(1) Type and number of entities affected: The proposed regulation affects approximately 600 property and casualty insurers authorized to transact business in Kentucky.

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

1. First year: The cost of prior approval procedures are imposed by KRS 304.13-051, not the proposed regulation.

2. Continuing costs or savings: Costs or savings of the prior approval of property and casualty insurance rates required by KRS 304.13-051 are imposed by that statute, not the proposed regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The standards imposed by the proposed regulation are those typically imposed under property and casualty insurance rate regulatory mechanisms. Therefore, they do not impose substantial costs or have any substantial effect on competition.

(b) Reporting and paperwork requirements: All filings will be required to discuss the standards set forth in the proposed regulation, especially those set forth in Section 1(3).

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs involved are imposed by KRS 304.13-051, not the proposed regulation.

2. Continuing costs or savings: These costs are imposed by KRS 304.13-051, not the proposed regulation.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All filings subject to the "flex rating" provisions of KRS 304.13-051 will have to discuss the standards imposed by the regulation. This may generate additional reporting as well as internal paperwork within the Department of Insurance and between the department and its consulting actuaries.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative would be to have no standards to be met by property and casualty insurance rate

filing subject to the "flex rating" provisions of KRS 304.13-051. This is an unsatisfactory alternative in that it would frustrate the intent of the legislature in adopting the 1988 amendment to KRS 304.13-051.

(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? Tiering was applied to the proposed regulation.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Vital Statistics Branch

901 KAR 5:110. Blood and body fluid precautions.

RELATES TO: KRS Chapter 213

PURSUANT TO: KRS 13A.070, 194.040, 211.090, 213.110

NECESSITY AND FUNCTION: KRS 213.110 requires the Cabinet for Human Resources to compile a list of communicable diseases which require blood and body fluid precautions. The purpose of this regulation is to list such diseases.

Section 1. Diseases Requiring Blood and Body Fluid Precautions. The following diseases and conditions are hereby declared by the Cabinet for Human Resources to require blood and body fluid precautions:

(1) Abscess;
(2) Acquired immunodeficiency syndrome (AIDS);
(3) Adenovirus infection;
(4) Amebiasis;
(5) Anthrax;
(6) Babesiosis;
(7) Bartonellosis;
(8) Bronchiolitis;
(9) Bronchitis;
(10) Brucellosis;
(11) Cellulitis;
(12) Chicken pox;
(13) Chlamydial infection;
(14) Cholera;
(15) Colorado tick fever;
(16) Conjunctivitis;
(17) Coronavirus disease;
(18) Coxsackie virus disease;
(19) Creutzfeldt-Jakob disease;
(20) Cytomegalovirus infection;
(21) Decubitus ulcer;
(22) Dengue fever;
(23) Diarrhea of unknown or infectious etiology;
(24) Diptheria;
(25) Echovirus disease;
(26) Endometritis;
(27) Enterocolitis;
(28) Enteroviral infection;
(29) Epstein-Barr virus infection, including infectious mononucleosis;
(30) Erythema infectiosum (fifth disease);
(31) Fever of unknown origin;
(32) Furunculosis;
(33) Gas gangrene;
(34) Gastroenteritis;
(35) Giardiasis;
(36) Hand, foot and mouth disease;
(37) Hemorrhagic fever (for example, Ebola, Marburg, Crimean-Congo and Lassa fevers);
(38) Viral hepatitis (acute hepatitis A; acute and chronic hepatitis B, delta hepatitis, and non-A non-B hepatitis);
(39) Herpangina;
(40) Herpes simplex disease;
(41) Herpes zoster disease (varicella shingles);
(42) Human immunodeficiency virus (HIV) infection;
(43) Influenza;
(44) Kala-azar (visceral leishmaniasis);
(45) Keratoconjunctivitis;
(46) Legionellosis;
(47) Leptospirosis;
(48) Lyme disease;
(49) Malaria;
(50) Measles (rubeola);
(51) Melioidosis;
(52) Meningitis;
(53) Meningococcal disease;
(54) Mumps;
(55) Mycoplasmal pneumonia;
(56) Norwalk agent infection;
(57) Orf virus disease;
(58) Parainfluenza virus infection;
(59) Pertussis;
(60) Pharyngitis;
(61) Plague;
(62) Pleurodynia (epidemic myalgia);
(63) Pneumonia;
(64) Poliomyelitis;
(65) Psittacosis (ornithosis);
(66) Q fever;
(67) Rabies;
(68) Rat-bite fever;
(69) Relapsing fever;
(70) Respiratory syncytial virus (RSV) infection;
(71) Rocky Mountain spotted fever and other rickettsial fevers;
(72) Rotavirus infection;
(73) Rubella;
(74) Salmonellosis;
(75) Septicemia;
(76) Shigellosis;
(77) Staphylococcal disease;
(78) Streptococcal disease;
(79) Syphilis (venereal and nonvenereal);
(80) Toxic shock syndrome;
(81) Trachoma, acute;
(82) Tuberculosis;
(83) Tularemia;
(84) Typhoid fever;
(85) Typhus;
(86) Vaccinia;
(87) Varicella;
(88) Venezuelan equine encephalitis;
(89) Vibrio infection;
(90) Viral disease, not otherwise specified;
(91) Yaws (early stage);
(92) Yellow fever;
(93) Yersinosis; and
(94) All other communicable diseases.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: June 21, 1988

FILED WITH LRC: July 13, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. at Health Services

Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Omar L. Greeman

(1) Type and number of entities affected: Approximately 500 funeral homes and any other facility performing postmortem procedures on human cadavers.

(a) Direct and indirect costs or savings to those affected: This regulation will have no affect on cost or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: This regulation does not require reports.

(2) Effects on the promulgating administrative body: This regulation will not create any change or impose any additional duty on the Cabinet for Human Resources.

(a) Direct and indirect costs or savings: This regulation neither increases or decreases cost.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: This regulation does not require reports.

(3) Assessment of anticipated effect on state and local revenues: This regulation will have no affect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The legislative mandate for this regulation did not provide for alternatives.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No other statute, regulation or policy conflict with, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Applies to all entities equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute mandating this regulation.

2. State compliance standards. Compliance standards will not be a part of this regulation.

3. Minimum or uniform standards contained in the federal mandate. There are not federal standards in this regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Again, there is no federal mandate for this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation does not impose standards, responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes_____ No__X__

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This will not affect local government at all.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation does not relate to any aspect of local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect any local government service.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 2:110. Reportable communicable diseases and sexually transmitted diseases which are transmissible through blood.

RELATES TO: KRS 211.180, 214.010, 214.020, 333.130

PURSUANT TO: KRS 214.460

NECESSITY AND FUNCTION: KRS 214.460 mandates the Cabinet for Human Resources to set forth in administrative regulation those reportable communicable diseases or sexually transmitted diseases which may be transmitted through blood.

Section 1. Definitions. Terms that are used in this regulation are as defined in KRS 214.450.

Section 2. The following reportable communicable diseases or sexually transmitted diseases are transmissible through blood and therefore subject to the provisions of KRS 214.452 concerning testing of donated blood by blood establishments as defined in KRS 214.450(2).

(1) Acquired immunodeficiency syndrome (AIDS);

(2) Acute viral hepatitis A;

(3) Acute or chronic viral hepatitis B, delta hepatitis, non-A non-B hepatitis;

(4) Leptospirosis;

(5) Malaria;

(6) Syphilis;

(7) Yellow fever.

C. HERNANDEZ, MD, MPH, Commissioner
HARRY J. COWHERD, MD, Secretary

APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1988 at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 17, 1988 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther
(1) Type and number of entities affected: This will affect all blood establishments in the Commonwealth, i.e., any entity which engages in the "collection, preparation, processing, labeling, packaging and dispensing of blood or blood products." This will include all blood banks and centers and most hospitals and ambulatory surgery centers. All blood establishments will be required to ask potential donors about the diseases listed in this regulation.
(a) Direct and indirect costs or savings to those affected: No substantial costs or savings.
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 substantial costs or savings.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Minor cost to promulgate regulation.
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: 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? No. Tiering is not appropriate in this instance. This list of blood borne communicable diseases will be asked about by all blood establishments.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 2:120. Standardized risk factor history form and blood donor consent form.

RELATES TO: KRS 211.180, 214.010, 214.020, 333.130, 21 CFR Ch. 1 Part 640
PURSUANT TO: KRS 13A.110, 214.462

NECESSITY AND FUNCTION: KRS 214.462 mandates the Cabinet for Human Resources to issue a standardized risk factor history form and blood donor consent form that meets the standards for suitability of donors as set forth in this provision and by the United States Food and Drug Administration. This regulation is being promulgated to establish the minimum content of these forms.

Section 1. Definitions. Terms that are used in this regulation are as defined in KRS 214.450.

Section 2. Kentucky Standardized Risk Factor History Form and Kentucky Standardized Blood Donor Consent Form. (1) The Kentucky standardized risk factor history form and Kentucky standardized blood donor consent form, as set out in this regulation, contain information and questions to be used by all blood establishments in the state to determine if donors of blood are at high risk for infection with the human immunodeficiency virus, or have tested confirmatory positive for infection with the human immunodeficiency virus; or have acquired immune deficiency syndrome; or have tested confirmatory positive for infection with any causative agent for acquired immune deficiency syndrome recognized by the United States Centers for Disease Control; or have a blood borne communicable disease; or have a blood borne sexually transmitted disease. The Kentucky standardized blood donor consent form incorporates the standards for suitability of donors as set forth in KRS 214.450 to KRS 214.466 and in 21 CFR Ch. 1 Part 460 by the United States Food and Drug Administration.
(2) These two (2) forms, as set out in this regulation, shall be used by all blood establishments in the state. All potential donors of blood or donors of blood shall answer each yes/no question and sign each of the two (2) forms.
(3) A copy of these forms can be obtained from the Office of the Commissioner of the Department for Health Services between the hours of 8 a.m. and 4:30 p.m, Monday through Friday. This office is located at 275 East Main Street, Frankfort, Kentucky 40621.

(See Forms on pages following regulation)

C. HERNANDEZ, MD, MPH, Commissioner
HARRY J. COWHERD, MD, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1988 at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 17, 1988 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther
(1) Type and number of entities affected: All "blood establishments" as defined by KRS 214.450. This will include all blood banks and

centers, most hospitals and ambulatory surgery centers, any entity involved in the "collection, preparation, processing labeling, packaging, and dispensing of blood or blood products".

(a) Direct and indirect costs or savings to those affected: Costs will be substantial since all entities affected are now using their own forms.

1. First year: Costs will be substantial during the first year since most entities affected are now using their own forms. The statute under which this regulation is required to be promulgated does not allow for existing stocks of forms to be used up. Entities affected will bear the cost of printing the new form and the cost of existing forms already printed.

2. Continuing costs or savings: The content of the form will change periodically as CDC and FDA requirements change. New forms will have to be printed.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Existing forms used by blood banks are tailored to meet the needs of each individual organization (Red Cross, Central Kentucky Blood Center, etc.) including their information systems, administrative systems and even educational materials for donors. Blood establishments may incur other costs in changing these systems and materials to utilize the new form.

(b) Reporting and paperwork requirements: One of each of the two (2) forms will have to be completed and signed for each potential paid or volunteer donor of blood.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: A considerable number of man-hours were expended in developing the form and the regulation. The administrative body will incur additional costs when the form is revised due to changing FDA and CDC requirements.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The administrative body will incur additional costs when the form is revised due to changing FDA and CDC requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: It would have been preferable to allow the Cabinet for Human Resources to specify the content of the form in a regulation rather than to actually develop the form. However, KRS 214.462 states that the Cabinet for Human Resources develop and issue two (2) forms.

(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 statute requires that a standardized form be used by all blood establishments.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate) The federal regulations concerning standards for suitability of donors do not specify the format or content of forms to be used by blood establishments. The information recorded on these two forms will be used by blood centers to determine whether the potential donor meets the standards for suitability of donors contained in 21 CFR Ch. 1 Part 460.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? Yes, as said above, this regulation specifies the format and content of the history and consent forms. Federal regulations do not do this.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. These stricter requirements are mandated by KRS 214.462.

RISK FACTOR HISTORY FORM

As Required by KRS 214.462

(1) **Acquired immune deficiency syndrome (AIDS)**

(a) **You are at risk for getting AIDS and spreading the AIDS virus if:**

- You are a man who has had sex with another man since 1977, even one time.
- You have ever taken illegal drugs by needle.
- You are a native of Haiti, Burundi, Kenya, Rwanda, Tanzania, Uganda, or Zaire who entered the United States after 1977.
- You have AIDS.
- You have ever had a positive test for HTLV-III or HIV antibody showing past infection with the AIDS virus or had a positive test for infection with any causative agent for acquired immune deficiency syndrome.
- You have hemophilia and have received clotting factor concentrates.
- You are or have been the sex partner of any person described above since 1977.

(b) **Signs and Symptoms of AIDS.** Having any of the following symptoms does not mean you have AIDS. However, if you do have any of these symptoms or signs, you should see your doctor. The signs and symptoms of AIDS include:

- Unexplained weight loss.
- Night sweats.
- Blue or purple spots on or under the skin.
- Long-lasting white or unusual sores in the mouth.
- Lumps in the neck, armpits, or groin lasting more than a month.
- Fever greater than 99 degrees for more than 10 days.
- Diarrhea lasting more than one month.

(c) Are you at risk for getting AIDS and spreading the AIDS virus because one or more of the items in (a) or (b) above is true about you? Yes ☐ No ☐

(2) **Hepatitis -**
(a) Have you ever had hepatitis (a liver disease that may be caused by a virus), or a positive blood test for hepatitis? Yes ☐ No ☐
(b) Have you been in close contact with a person with hepatitis within the past six months? Yes ☐ No ☐

(3) **Malaria** - In the past three years, have you had malaria, taken anti-malarial drugs, or traveled to or from a country where malaria is common? Yes ☐ No ☐

(4) **Other Communicable Diseases Transmissible through Blood** - Do you have active syphilis, yellow fever, leptospirosis, or malaria? Yes ☐ No ☐

(5) Have you received a blood transfusion or blood injection within the past six months? Yes ☐ No ☐

(6) Do you now have any signs of a cold, sore throat, flu, cough, or trouble breathing? Yes ☐ No ☐

(7) Have you ever taken human growth hormone? Yes ☐ No ☐

PENALTIES

KRS 214.454. No donor or potential donor of blood shall give false information to the staff of a blood establishment about such person's diagnosis as having AIDS or risk for infection or actual infection with the human immunodeficiency virus, or having any known causative agent of AIDS, or having a blood borne sexually transmitted disease, or having a blood borne communicable disease.

KRS 214.990 (7). Any person who knowingly violates any provision of this Act shall be guilty of a Class D felony. Each violation shall constitute a separate offense.

I have read the risk factor history form and I understand it. Yes ☐ No ☐

I understand that giving false information on this form is a Class D felony. Yes ☐ No ☐

All the information I have given on this form is correct and I elect to donate my blood or plasma for use as needed. Yes ☐ No ☐

Date _____ Signature _____

Approved CHR 7-15-88

KENTUCKY STANDARDIZED BLOOD DONOR CONSENT FORM

As Required by KRS 214.462

Social Security # – –	Name Last	First	Middle Initial
Street Address	City	State	Zip Code
Birth Date	Sex M F	Home Phone ( )	Work Phone ( )
Today's Date	Date of Last Donation		
Temperature	Blood Pressure	Pulse	Weight
Hemoglobin	Serum Protein	Needle Tracks on Arms Y N	Skin Disease on Arms Y N

	Yes	No		Yes	No
1. Are you at high risk for infection with the human immunodeficiency virus?			6. Have you ever been immunized to human blood cell antigens?		
2. Have you tested confirmatory positive for infection with the human immunodeficiency virus?			7. Have you had malaria, pills to prevent malaria or ever been in a foreign country?		
3. Have you tested confirmatory positive for infection with any causative agent for acquired immune deficiency syndrome?			8. Do you have viral hepatitis, have you been in close contact with an individual having viral hepatitis, or have you received, within six months, blood that is a possible source of viral hepatitis?		
4. Do you have acquired immune deficiency syndrome?			9. Is blood to be withdrawn from this donor for therapeutic reasons? What disease? _____		
5. Do you have any other blood borne communicable or sexually transmissible disease?			10. Do you have or have you recently had a cold, sinusitis, flu, sore throat, cough, or trouble breathing?		

Plasmapheresis Donors Only	Yes	No
1. Has the donor given written consent to donate after a qualified licensed physician has explained the hazards of the procedure to the prospective donor?		
2. Has the donor had red blood cells returned from a unit of blood collected during any plasmapheresis procedure conducted during the past eight weeks?		
3. Has the donor been immunized within the past six months by injection with human red blood cells?		
4. Has the donor been examined by a physician and certified to be in good health?		
Does the donor appear to be under the influence of any drug or appear to have given unreliable answers to the medical history questions?		

TO THE DONOR: Most people feel fine while they are giving blood or plasma, but a few might feel dizzy, have nausea or notice a bruise, redness, or pain around the area where the needle was inserted. Very rarely a person may faint and have muscle contractions but this lasts only a few minutes and recovery is quick.

A sample of your blood will be tested for hepatitis, syphilis, human immunodeficiency virus (HIV), any known causative agent of acquired immune deficiency syndrome (AIDS) and any other communicable disease transmissible through blood for which tests are approved and required by the United States Food and Drug Administration. As required by law, positive test results will be reported to the Kentucky Department for Health Services.

I have read and I understand the information this blood establishment has given me about the spread of AIDS and other blood borne communicable diseases through blood and plasma and agree not to donate blood or plasma if I am at risk of spreading the AIDS virus or any of the other communicable diseases listed on the Kentucky Standardized Risk Factor History Form. Yes ☐ No ☐

I have read and I understand the statement above about the possibility of a reaction when I donate blood and about the testing of my blood. Yes ☐ No ☐

I understand giving false information on this form is a Class D felony. Yes ☐ No ☐

All the information I have given on this form is correct and I donate my blood or plasma for use as needed. Yes ☐ No ☐

_____ Today's Date

_____ Legal Signature of Donor

Approved CHR 7/15/88

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 50:120. Unpasteurized goat milk.

RELATES TO: KRS Chapter 217C
PURSUANT TO: KRS 217C.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS 217C.090 to issue administrative regulations allowing, upon written recommendation of a physician, the sale of goat milk which has not been pasteurized. This regulation sets uniform standards for the production, handling, sampling, examination and sale, at the farm, of goat's milk which has not been pasteurized and for the inspection of the goat farm facilities and provides for the issuance, revocation and reinstatement of farm permits.

Section 1. Permits. (1) No person shall sell or offer for sale unpasteurized goat milk, without first obtaining a permit from the cabinet.

(2) Prior to the issuance of any permit to a goat milk producer, the cabinet shall conduct an inspection of the producer's facilities. A producer who is not in compliance with this regulation, shall not be issued a permit and violations shall be given to the producer in writing and/or posted in a conspicuous place at the farm. A permit may be issued whenever the inspection reveals compliance with this regulation.

(3) Permits shall not be transferable with respect to persons or locations and shall remain valid unless suspended or revoked by the cabinet.

(4) The cabinet shall suspend such permit, whenever it has reason to believe that a public health hazard exists; or whenever the permit holder has violated any of the requirements of this regulation or whenever the permit holder has interfered with the cabinet in the performance of its duties: the cabinet shall in all cases except where the milk involved creates, or appears to create, an imminent hazard to the public health; or in any case of a willful refusal to permit authorized inspection, serve upon the holder a written notice of intent to suspend permit, which notice shall specify with particularity the violation(s) in question and afford the holder such reasonable opportunity to correct such violation(s) as may be agreed to by the parties, or in the absence of agreement, fixed by the cabinet before making any order of suspension effective. A suspension of permit shall remain in effect until the violation has been corrected to the satisfaction of the cabinet. Upon notification acceptable to the cabinet by any person whose permit has been suspended, or upon application within forty-eight (48) hours by any person who has been served with a notice of intention to suspend, and in the latter case before suspension, the cabinet shall within seventy-two (72) hours proceed to a hearing to ascertain the facts of such violation or interference and upon evidence presented at such hearing shall affirm, modify, or rescind the suspension or intention to suspend. Upon repeated violation(s), the cabinet may revoke such permit following reasonable notice to the permit holder and an opportunity for a hearing.

(5) Any producer whose permit has been suspended may make written application for reinstatement of the permit.

(6) When the permit suspension has been due to violation of quality or temperature standards, the cabinet, within one (1) week after receipt of notification for reinstatement of permit shall conduct an inspection and collect a sample to determine if compliance with this regulation is being met. Whenever the inspection and sample analysis indicate compliance with the regulation, permit reinstatement may be made.

(7) When the permit suspension has been due to the presence of a pathogenic organism in the milk sample, collection and analysis shall continue at the rate of at least two (2) per week for two (2) weeks after conditions of subsection (6) of this section have been met.

Section 2. Sale Restrictions and Volume Control. (1) Unpasteurized goat milk shall be sold from a permitted goat producer only to persons who have written recommendation from a physician.

(2) A written recommendation statement from a physician shall be for a specific individual and shall be kept on file at the producer location and subject to inspection by the cabinet.

(3) Written recommendation statements shall be kept on file by the producer for at least one (1) year.

(4) The producer shall keep on file records stating volume of unpasteurized goat milk sold and date of sales to each person having submitted a written recommendation statement.

(5) All sale of unpasteurized goat milk regulated under this regulation shall be from on-the-farm sales only.

Section 3. Inspection of Goat Farm. (1) Inspection of each goat farm shall be made prior to the issuance of a permit.

(2) Inspection of each goat farm shall be made at least once each two (2) months after the issuance of a permit.

(3) If the violation of any requirement set forth in Section 6 of this regulation be found to exist on an inspection, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three (3) days. This second inspection shall be used to determine compliance with the requirements of Section 6 of this regulation. Any violation of the same requirement of Section 6 of this regulation on such second inspection shall call for permit suspension in accordance with Section 1(4) of this regulation.

(4) One (1) copy of the inspection report shall be handed to the operator, or other responsible person, or be posted in a conspicuous place on an inside wall of the milk house. Said inspection report shall not be defaced and shall be made available to the cabinet upon request. An identical copy of the inspection report shall be filed with the records of the cabinet.

(5) Every goat producer shall, upon request of the department, permit access of officially designated persons to all parts of the milk house or facilities to determine compliance with the provisions of this regulation.

(6) No person shall in an official capacity, obtain any information under the provisions of this regulation (including information as to the quantity, quality, source or disposition of milk or milk products, or results of inspections or tests thereof) to use such information to his

own advantage or to reveal it to any unauthorized person.

Section 4. Sampling Frequency and Required Test. (1) A representative sample of each producer's milk shall be collected at the farm by the cabinet each month and analyzed in an official laboratory for bacteria count, somatic cell count, antibiotics, adulteration with water and temperature.

(2) Additional samples shall be collected at the farm by the cabinet at least every two (2) months and analyzed for pathogenic organisms in an official laboratory as directed by the cabinet.

(3) Samples of raw milk may be collected for pesticide analysis as directed by the cabinet.

(4) Whenever two (2) of the last four (4) consecutive bacterial counts, somatic cell counts or cooling temperatures, taken on separate days, exceed the limit of the standard, the cabinet shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two (2) of the last four (4) consecutive samples exceed the limit of the standard. An additional sample shall be taken within twenty-one (21) days of the sending of such notice, but not before the lapse of three (3) days. Immediate suspension of permit in accordance with Section 1(4) of this regulation and/or court action shall be instituted whenever the standard is violated by three (3) of the last five (5) bacterial counts, cooling temperatures or somatic cell counts.

(5) Whenever an antibiotic or pesticide residue test is positive, an investigation shall be made to determine the cause, and the cause shall be corrected. An additional sample shall be taken and tested for antibiotic or pesticide residues and no milk shall be offered for sale until it is shown by a subsequent sample to be free of antibiotic or pesticide residues or below the actionable levels established for such residues.

(6) Whenever pathogenic organisms are found in the milk immediate permit suspension shall occur and no milk shall be sold from the farm until at least four (4) consecutive tests taken on separate days contain no pathogenic organisms upon laboratory analysis.

(7) All samples shall be analyzed in an official or officially designated laboratory. Analytical procedures shall be in compliance with Standard Methods for the Examination of Dairy Products and/or Official Methods of Analysis of the Association of Official Analytical Chemists.

Section 5. Bacterial, Chemical and Temperature Standards. (1) All unpasteurized goat milk shall be produced, handled, stored and packaged to conform with the following standards:

(a) Temperature - cooled to forty-five (45) degrees Fahrenheit or less within two (2) hours after milking and subsequent milkings shall not exceed fifty (50) degrees Fahrenheit if blended with previous milkings.

(b) Bacterial limits - not to exceed 20,000 per ml.

(c) Somatic cells - not to exceed 100,000 per ml.

(d) Antibiotics - negative.

(e) Coliform - not to exceed ten (10) per ml.

(f) Pathogens - negative.

(g) Pesticides and chemical adulterants - negative.

(2) No process, manipulation or additives shall be applied to the milk other than appropriate refrigeration, for the purpose of removing or deactivating microorganisms.

Section 6. Sanitation Requirements. (1) Abnormal milk. Goats, which show evidence of the secretion of abnormal milk based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment and the milk shall be discarded. Goats treated with, or goats which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk and which, in the judgment of the cabinet may be deleterious to human health, shall be milked last or with separate equipment and the milk disposed of as the department may direct.

(2) Milking barn or parlor construction. A milking barn or parlor shall be provided on all farms in which the milking herd shall be housed during milking operations. The areas used for milking purposes shall:

(a) Have floors constructed of concrete or equally impervious material;

(b) Have walls and ceiling which are smooth, painted or finished in an approved manner, in good repair, ceiling dust tight;

(c) Be provided with natural and/or artificial light, well distributed for day and/or night milking;

(d) Provide sufficient air space and air circulation to prevent condensation and excessive odors;

(e) Not be overcrowded; and

(f) Have dust tight covered boxes or bins, or separate storage facilities for ground, chopped, or concentrated feed.

(3) Milking barn or parlor cleanliness. The interior shall be kept clean. Floors, walls, ceilings, windows, pipelines, and equipment shall be clean and free of filth and/or litter. Swine and fowl shall be kept out of the milking area.

(4) Goat yard. The goat yard shall be graded and drained and shall have no standing pools of water or accumulations of organic wastes: in loafing or goat housing areas, goat droppings and soiled bedding shall be removed, or clean bedding added, at sufficiently frequent intervals to prevent the soiling of the goat's udder and flanks. Waste feed shall not be allowed to accumulate. Manure packs shall be properly drained and shall provide a firm footing. Swine shall be kept out of the goat yard.

(5) Milk house or room construction and facilities. A milk house or room of sufficient size shall be provided, in which the cooling, handling, storing, and packaging of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted: except as provided for in subsection (12) of this section. The milk house shall be provided with a smooth floor constructed of concrete or equally impervious material graded to drain and maintained in good repair. Liquid waste shall be disposed of in a sanitary manner; all floor drains shall be accessible and shall be trapped if connected to a sanitary sewer system. The walls and ceilings shall be constructed of smooth material, in good repair, well painted, or finished in an equally suitable manner. The

milk house shall have adequate natural and/or artificial light and be well ventilated. The milk house shall be used for no other purpose than milk house operations; there shall be no direct opening into any barn, stable, or into a room used for domestic purposes: a direct opening between the milk house and milking barn, or parlor is permitted when a tight-fitting self-closing solid door hinged to be single or double acting is provided. Potable water under pressure shall be piped into the milk house. The milk house shall be equipped with a two (2) compartment wash vat and adequate hot water heating facilities. Bottling and/or packaging may be carried out in the milk room provided it is done in a sanitary manner and by a method which prevents contamination.

(6) Milk house or room cleanliness. The floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils and equipment and other milk room equipment shall be clean. Only articles directly related to milk room activities shall be permitted in the milk room. The milk room shall be free of trash, animals, and fowl.

(7) Toilet. Every farm shall be provided with one (1) or more toilets, conveniently located and properly constructed, operated, and maintained in a sanitary manner. The waste shall be inaccessible to flies and shall not pollute the soil surface of contaminate any water supply.

(8) Water supply. Water for milk house and milking operations shall be from a supply properly located, protected, and operated, and shall be easily accessible, adequate and of a safe, sanitary quality.

(a) No cross-connection shall exist between a safe water supply and any unsafe or questionable water supply, or any other source of pollution.

(b) The well or other source of water shall be located and constructed in such a manner that neither underground nor surface contamination from any sewerage systems, privy, or other source of pollution can reach such water supply.

(c) New individual water supplies and water supply systems which have been repaired or otherwise become contaminated shall be thoroughly disinfected before being placed in use. The supply shall be made free of the disinfectant by pumping to waste before any sample for bacteriological testing shall be collected.

(d) All containers and tanks used in the transportation of water shall be sealed and protected from possible contamination. These containers and tanks shall be subjected to a thorough cleaning and a bacteriological treatment prior to filling with potable water to be used at the farm.

(e) Samples for bacteriological examination shall be taken upon the initial approval of the physical structure and when any repair or alteration of the water supply system has been made, and at least every year.

(9) Utensils and equipment construction. All multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be made of smooth, nonabsorbent, corrosion-resistant, nontoxic materials, and shall be so constructed as to be easily cleaned. All containers, utensils, and equipment shall be in good repair. All milk pails used for hand milking and stripping shall be seamless and of the hooded type. Multiple-use woven material shall not be used for straining milk. All single-service articles shall have been manufactured, packaged, transported, and handled in a sanitary manner and shall comply with the applicable requirements of subsection (11) of this section. Articles intended for single-service use shall not be reused. Containers for purchasing milk may be provided by the person(s) purchasing the milk, in which case the containers shall not be washed, sanitized or stored at the farm.

(10) Utensils and equipment cleaning. The product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be cleaned after each usage.

(11) Utensils and equipment sanitation. The product contact surfaces of all multiuse containers, equipment and utensils used in the handling, storage, or transportation of milk shall be sanitized before each use.

(12) Utensils and equipment storage. All containers, utensils and equipment used in the handling, storage, or transportation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage, and shall be protected from contamination prior to use: pipeline milking equipment such as milker claws, inflations, weigh jars, meters, milk hoses, milk receivers, tubular coolers and milk pumps which are designed for mechanical cleaning may be stored in the milking barn or parlor provided this equipment is designed, installed and operated to protect the product and solution-contact surfaces from contamination at all times.

(13) Utensils and equipment handling. After sanitization, all containers, utensils, and equipment shall be handled in such manner as to prevent contamination of any product-contact surface.

(14) Milking flanks, udders, and teats. Milking shall be done in the milking barn or parlor. The flanks, udders, and bellies of all milking goats shall be free from visible dirt. All brushing shall be completed prior to milking. The udders and teats of all milking goats shall be cleaned and treated with a sanitizing solution just prior to milking, and shall be dry before milking. Wet hand milking is prohibited.

(15) Milking surcingles, milk stools, and antikickers. Surcingles, milk stools, and antikickers shall be kept clean and stored above the floor.

(16) Protection from contamination. The milking area and milk house operations, and equipment, shall be located and conducted to prevent contamination of milk, equipment, containers, and utensils. No milk shall be strained, poured, transferred, or stored unless it is properly protected from contamination. Handcapping of bottles, containers, or packages may be done whenever volume does not cause this to be impractical and provided protection from contamination is maintained.

(17) Personnel handwashing facilities. Adequate handwashing facilities shall be provided in the milk house with running potable water, soap or detergent, and individual sanitary towels.

(18) Personnel cleanliness. Hands shall be washed clean and dried with an individual sanitary towel immediately before milking, before performing any milk house function, and

immediately after the interruption of any of these activities. Milkers shall wear clean outer garments while milking or handling milk, milk containers, utensils, or equipment.

(19) Cooling. Raw milk shall be cooled to forty-five (45) degrees Fahrenheit (seven (7) degrees Celsius) or less within two (2) hours after milking. The blend temperature after the first milking and subsequent milkings does not exceed fifty (50) degrees Fahrenheit (ten (10) degrees Celsius).

(20) Insect and rodent control. Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects and rodents and by chemicals used to control such vermin. Milk rooms shall be free of insects and rodents. Surroundings shall be kept neat, clean, and free of conditions which might harbor or be conducive to the breeding of insects and rodents.

Section 7. Animal Health. (1) All milk shall be from herds which are free from tuberculosis and brucellosis.

(2) Herds shall be tested annually for tuberculosis and any reactors disposed of in accordance with Department of Agriculture requirements.

(3) Herds shall participate in a brucellosis milk ring testing program which is conducted by the Department of Agriculture.

(4) The cabinet shall require such physical, chemical, or bacteriological tests as deemed necessary to prevent the spread of other diseases or the contamination of the milk with pathogenic organisms.

(5) A certificate identifying test results of each animal, signed by a veterinarian shall be submitted to the cabinet for each test required by this section.

(6) Failure to comply with the requirements of this section shall result in immediate permit suspension.

Section 8. Milk Which May Be Sold. Goat milk sold at a farm permitted under this regulation shall be limited to milk produced at the particular farm and no milk shall be transferred from one farm to another or delivered from the farm to another place or location for sale.

Section 9. Construction Plan. Properly prepared plans for all milking barns, parlors and milk houses shall be submitted to the cabinet for written approval prior to a permit being issued.

Section 10. Personnel Health. No person affected with any disease in a communicable form, or while a carrier of such disease, shall work at the farm in any capacity handling, storage, or sale of milk, containers, equipment and utensils; and no farm operator shall employ in any such capacity any such person, or any person suspected of having any disease in a communicable form, or of being a carrier of such disease. Any owner of a dairy farm on which any communicable disease occurs, or who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of such disease, shall notify the cabinet immediately.

Section 11. Procedure When Infection is Suspected. When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk the cabinet is authorized to require any or all of the following measures:

(1) The immediate exclusion of that person from milk handling;

(2) The immediate exclusion of the milk supply concerned from distribution and sale;

(3) Adequate medical and bacteriological examination of the person(s), involved in milk production or handling activities.

Section 12. Disclaimer. Milk produced within compliance of the requirements of this regulation does not assure the absence of pathogenic organisms.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 7, 1988
FILED WITH LRC: July 11, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1988, 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 August 17, 1988, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Leon Townsend

(1) Type and number of entities affected: Unknown, could be as many as 100 or more.

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

1. First year: Estimated - $500 to $1,000.
2. Continuing costs or savings: $200
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Maintaining production records and written recommendations of physician.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: Costs: $118,000 est.

1. First year: $118,000
2. Continuing costs or savings: Costs: $118,000.
3. Additional factors increasing or decreasing costs: Should there be more producers requesting permitting than anticipated, cost will increase.

(b) Reporting and paperwork requirements: Routine inspection and sample analysis reports.

(3) Assessment of anticipated effect on state and local revenues: Budget increase with general fund dollars.

(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 does not apply because KRS 217C.090 relates to all

goat producers and does not differentiate based on size or sales volume.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

906 KAR 1:040. Blood establishment licensure.

RELATES TO: KRS 216B.010 to 216B.130, 333.120
PURSUANT TO: KRS 214.020, 214.450 to 214.466, 21 CFR Chapter 1, part 601
NECESSITY AND FUNCTION: KRS 214.450 to 214.466 mandates that specific requirements relating to federal licensure, donor records, administrative procedures and the posting of informational signs must be followed by all blood establishments in the Commonwealth. This regulation has been promulgated to monitor facility compliance with these requirements.

Section 1. Licensure. All blood establishments, as defined by KRS 214.450, must be licensed by United States Food and Drug Administration (FDA).

Section 2. Donor Records. Donor records shall be maintained by the blood establishment. These records, at a minimum, shall contain the following:
(1) A standardized blood donor consent form; and
(2) A standardized risk factor history form.

Section 3. Administrative Procedures. The blood establishment shall establish administrative procedures to assure that:
(1) All paid and volunteer donors may self-elect not to donate blood;
(2) The blood establishment refuses to accept for donation or sale any blood from persons at high risk for infection with the human immunodeficiency virus, or who have been medically diagnosed as having acquired immune deficiency syndrome, or who have tested confirmatory positive for infection with the human immunodeficiency virus, or who have a blood borne communicable disease, or who have a blood borne sexually transmitted disease;
(3) Each unit of blood collected by a blood establishment for transfusion into a living human person shall be affixed with the U.S. Food and Drug Administration required label which includes a donor identification number through with the following information can be obtained:
(a) Date the blood was collected;
(b) Name of blood establishment;
(c) Nonidentifying code representing the name of the blood donor;
(d) A blood establishment serial number for the blood;
(e) The date of laboratory testing of the blood;
(f) The name of the person and laboratory testing the blood; and
(g) The laboratory test results.
(4) The following shall be exempted from the testing requirements in subsection (3) of this section: all blood recovered from a patient through intraoperative salvage or hemodilution, if this blood is an integral part of the on-going surgery or surgical procedure and is utilized only by the patient from whom the blood is drawn.

Section 4. Sign Posting. The blood establishment shall post a sign which shall be visible to all potential blood donors. This sign shall read as follows:
"Persons with acquired immune deficiency syndrome (AIDS), or who have tested confirmatory positive for infection with the human immunodeficiency virus (HIV), or who have a blood borne communicable disease or sexually transmitted disease or who have been exposed to one (1) or more risk factors determined by the U.S. Centers for Disease Control to place such person at high risk for infection with the HIV virus or any AIDS-causative agent, are prohibited under Kentucky Revised Statutes from donating or selling blood. Persons violating the law are guilty of a Class D felony. ASK STAFF OF THIS BLOOD ESTABLISHMENT."

Section 5. Enforcement Notification. If the Office of Inspector General (OIG) ascertains that a blood establishment is not meeting the requirements of this regulation, the OIG shall inform the Commonwealth Attorney's Office of a potential violation of the applicable statutes.

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1988 at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 17, 1988 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander
(1) Type and number of entities affected: 125 hospitals, 70 laboratories, 30 misc. (blood banks, plasma centers).
(a) Direct and indirect costs or savings to those affected:
1. First year: This is difficult to measure in that these are mostly paperwork requirements. Most of these facilities already follow similar guidelines. Additional costs will be incurred through the application for FDA licensure process, and through the cost of reprinting state forms and informational sign.
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: Minimal. This agency will gain inspection duties in approximately 30 new facilities.
(a) Direct and indirect costs or savings:
1. First year: $100 for reproduction of the regulations.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: This will cause surveyors and inspectors to review an additional form.
(3) Assessment of anticipated effect on state

and local revenues: There should be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Monitoring and inspection functions are already done by this agency for the majority of these types of facilities, the responsibilities best reside with this agency.

(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. HB 50 requires that all blood establishments meet the same standards. There are no exceptions, so tiering could not be applied.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate) This regulation requires blood establishments to obtain federal licensure under 21 CFR Chapter 1, part 601. Additional requirements include: donor records, administrative procedures and sign posting.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? The stricter requirements are for donor records which must contain the donor consent and risk factor history form. The additional administrative procedures include written protocols for when the blood establishment may refuse a donation, and guidelines for a donor to self-elect not to donate blood. The blood establishment must also post a sign outlining the prohibition to donating blood if the donor may have a blood borne communicable disease.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. HB 50 codified into KRS Chapter 214.450 - 214.466 mandate these requirements.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:360. Preventive and remedial health care services provided through interagency agreement.

RELATES TO: KRS 205.520, 42 CFR 431.615
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 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 coverage and payment conditions for preventive and remedial health care services provided eligible medical assistance recipients through interagency agreement between the Medicaid single state agency and the state health department.

Section 1. Interagency Agreement. The Department for Medicaid Services may enter into an agreement with the Department for Health Services for the provision of covered preventive and remedial health care services to eligible Medicaid recipients by the Department for Health Services. That agreement shall be consistent with the terms and conditions shown in this regulation.

Section 2. Subcontracted Services. The Department for Health Services may subcontract with the local health departments under its jurisdiction for the provision of health care services as specified in Section 1 of this regulation. Such agreement shall not extend to services determined by the Department for Medicaid Services to be uncovered services within the Medicaid program. A copy of the subcontract shall be provided to the Department for Medicaid Services for retention in its files as appropriate.

Section 3. Covered Services. The Department for Health Services may provide a broad array of preventive, screening, diagnostic, rehabilitative, and remedial services. These services will be specifically identified by procedure in the interagency agreement and will generally be classified as one of the following types of medical care services: pediatric services, prenatal and related services, epidemiology, family planning, and unrestricted medical services.

Section 4. Payments. The Department for Health Services will be paid for each service at an amount which the Department for Medicaid Services finds is reasonably equivalent to cost. The first year of payments shall be prospective in nature with no cost settlements. After the first year, the Department for Medicaid Services will set rates using actual utilization data and will not settle back to costs unless required to do so to avoid paying the Department for Health Services an amount substantially in excess of cost. Payment rates shall be set annually to be effective on July 1 of each year.

Section 5. Participation. Local health departments operating primary care centers may elect to have such primary care centers participate separately in the Medicaid program. All other Medicaid related functions of the local health departments shall be construed as covered or coverable under this provision for interagency agreement (and subsequent subcontracting) unless determined otherwise by the Department for Medicaid Services.

Section 6. Audits. The Department for Medicaid Services reserves the right to examine and audit appropriate financial and service records of the Department for Health Services and subcontracting local health departments to determine the allowability of costs, provision of services, and appropriateness of services and further reserves such right to the following

named organizations or agencies and their lawfully appointed agents and representatives in the performance of their duties: the United States Department of Health and Human Services, the United States Health Care Financing Administration, the United States Attorney's Office, the Kentucky Attorney General's Office, and such other agents or representatives as may be designated by the Secretary, Cabinet for Human Resources.

Section 7. Effective Date. The provisions contained herein shall be effective with regard to services provided on or after July 1, 1988.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: June 30, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, phone: 502-564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: The state health department; local health departments; approximately 90,000 Medicaid recipients.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $4.2 million in payments to the state health department for services provided to Medicaid recipients.
2. Continuing costs or savings: $4.2 million in payments to the state health department for services provided to Medicaid recipients.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The health department will be required to record and report services; the $4.2 million includes necessary administrative funds for that purpose.
(3) Assessment of anticipated effect on state and local revenues: More state revenues will be required for the added expenditure.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Viable alternatives were not identified.
(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. This regulation deals with a single provider, the state health department, and tiering is not appropriate in this circumstance.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: No additional standards, requirements or responsibilities are imposed.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the July 6, 1988 Meeting

The July meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, July 6, 1988 at 10 a.m. in Room 107. Representative Mark D. O'Brien, Chairman, called the meeting to order, and the secretary called the roll. The minutes of the June 1, 1988 meeting were approved without objection.

Present July 6, 1988 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Harold Haering, Pat McCuiston and Senator Bill Quinlan; Representatives Jim Bruce and Joe Meyer.

Guests: Bert VanArsdale, Aleck Gribbins, Board of Auctioneers; Tommy Thompson, Board of Medical Licensure; Alta Haunsz, Mary Romelfanger, Bill Shouse, Board of Nursing; Dave Nicholas, Board of Examiners of Psychologists; Connie Y. Malone, Corrections Cabinet; Charles Briggs, Frederick A. Eckhart, Joseph Hayse, Sandra G. Pullen, Transportation Cabinet; Gary Bale, Nancy F. Kelly, Bill W. Stearns, Department of Education; Patrick Watts, Department of Insurance; Mike Fulkerson, State Racing Commission; William Martin, Judith G. Walden, Department of Housing, Buildings and Construction; Lonnie Carpenter, Barbara Coleman, O. Don Dixon, Eric Friedlander, Paul Gibson, N. Clifton Howard, Eugenia Jump, Alice M. Martinson, Larry Taylor, Cabinet for Human Resources; Alphonso Herrera, Comprehensive Medical Rehabilitation Center, Inc. - Lexington; Sammie Lambert, Department of Public Advocacy; V. Wayne Young, KY Association of School Administrators.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Vida Murray and Carla Arnold.

The Administrative Regulation Review Subcommittee met on July 6, 1988, and submits this report:

The administrative regulations considered at this July meeting are to be referred to an appropriate jurisdictional committee for review.

The Subcommittee determined that the following administrative regulation does not comply with KRS Chapter 13A or other applicable statutes as set forth below:

Public Protection and Regulation Cabinet: Department of Housing, Buildings and Construction: Local Fire Departments

815 KAR 45:015 (Aid to fire departments.) A motion was seconded and approved to attach a statement of objection to this administrative regulation. KRS Chapter 17 requires 50 percent certification for funding and makes no exceptions. The administrative regulation excludes new members on the active list of an established department from being counted in the 50 percent requirement. Therefore, this administrative regulation exceeds statutory authority. The Subcommittee also requests that LRC refer this administrative regulation to the Interim Joint Committee on Cities.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

General Government Cabinet: Board of Examiners of Psychologists

201 KAR 26:240 (Requirements for temporary licensure and certification.) This administrative regulation was amended as follows: (1) A new subsection was added to provide that: "This administrative regulation shall become effective upon review by the second legislative committee as provided in KRS Chapter 13A." KRS 13A.330 was amended during the 1988 Regular Session to provide that an administrative regulation is effective and adopted on adjournment of the second legislative subcommittee meeting at which the administrative regulation is reviewed. (2) The tiering statement included in the Regulatory Impact Analysis was revised to explain that tiering was not applied because all applicants for licensure or certification must be supervised by a licensed psychologist.

Labor Cabinet: Department of Workers' Claims: Workers' Compensation Board

803 KAR 25:011 (Procedure in Applications for Adjustments of Claims.) The Subcommittee and agency agreed to amend this administrative regulation as follows: (1) Amend Section 12(7) and (8) to include a page of contents in the petitioner's and the respondent's briefs. (2) Amend Section 9(5), relating to interlocutory relief, to comport with Section 5(4) by allowing a defendant twenty (20) days from the date of the issuance of the scheduling order to file a response.

Cabinet for Human Resources: Department for Health Services: Medical Laboratories

902 KAR 11:010 (Application for licensure; fee.) The regulatory impact analysis stated that the fee increase provided for by this administrative regulation was "mandated" by House Bill 516 (Budget Bill). The budget bill permits the Secretary of the Cabinet for Human Resources, but does not mandate, to increase fees regardless of statutory limitations. The regulatory impact analysis was amended to delete the word "mandate" and insert in lieu thereof the word "permitted".

Food and Cosmetics

902 KAR 45:120 (Inspection fees; permit fees; food service establishments, hotels, mobile home and recreational vehicle parks.) In response to questions by members of the Subcommittee, agency personnel stated that the statute did not permit a variation in inspection and permit fees in hotels based on number of rooms. Therefore, tiering was inappropriate and Section 3(3)(a) and (b) of the administrative regulation were amended to require a standard fee for all hotels.

Department for Employment Services: Employment Agencies

903 KAR 1:010 (Private employment agencies.) The regulatory impact analysis stated that the fee increase provided for by this administrative regulation was "mandated" by House Bill 516 (Budget Bill). The budget bill permits the Secretary of the Cabinet for Human Resources, but does not mandate, to increase fees regardless of statutory limitations. The regulatory impact analysis was amended to delete the word "mandate" and insert in lieu thereof the word "permitted".

Department for Social Services: Child Welfare
905 KAR 1:091 (Standards for facilities and agencies.) The regulatory impact analysis stated that the fee increase provided for by this administrative regulation was "mandated" by House Bill 516 (Budget Bill). The budget bill permits the Secretary of the Cabinet for Human Resources, but does not mandate, to increase fees regardless of statutory limitations. The regulatory impact analysis was amended to delete the word "mandate" and insert in lieu thereof the word "permitted".
Day Care
905 KAR 2:010 (Standards for all child day care facilities.) The regulatory impact analysis stated that the fee increase provided for by this administrative regulation was "mandated" by House Bill 516 (Budget Bill). The budget bill permits the Secretary of the Cabinet for Human Resources, but does not mandate, to increase fees regardless of statutory limitations. The regulatory impact analysis was amended to delete the word "mandate" and insert in lieu thereof the word "permitted".

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

General Government Cabinet: Board of Auctioneers
201 KAR 3:080 (Absolute Auction.)
Board of Medical Licensure
201 KAR 9:101 (Definitions relating to paramedics.)
Board of Nursing
201 KAR 20:161 (Investigation and disposition of complaints.)
201 KAR 20:215 (Contact hours, recordkeeping and reporting requirements for renewal of licensure.)

Corrections Cabinet: Office of the Secretary
501 KAR 6:030 (Kentucky State Reformatory.)
501 KAR 6:040 (Kentucky State Penitentiary.)
501 KAR 6:070 (Kentucky Correctional Institute for Women.)
501 KAR 6:120 (Blackburn Correctional Complex.)

Transportation Cabinet: Department of Highways: Traffic
603 KAR 5:070 (Truck dimension limits.)
603 KAR 5:210 (Extended weight coal haul road system.)
603 KAR 5:230 (Bridge weight limits on the extended weight coal haul road system.) In response to a question raised by Senator Haering, agency personnel stated that this administrative regulation was intended to list a road that was inadvertently omitted in the listing of roads in the extended weight coal haul system.
Education and Humanities Cabinet: Department of Education: Office of Superintendent
701 KAR 5:020 (Elementary and secondary education hearing officer.)
Office of Local Services: General Administration
702 KAR 1:115 (Annual in-service training of district board members.)
Office of Instruction: Instructional Services
704 KAR 3:290 (Chapter 1, ECIA annual program plan.)
704 KAR 3:292 (Chapter 1, ECIA migrant plan.)
Office of Vocational Education: Fiscal Management
705 KAR 2:120 (Distribution of funds for local operation of area vocational education centers and local vocational departments.)
Office of Vocational Rehabilitation: Administration
709 KAR 1:050 (Adult plan.)

Public Protection and Regulation Cabinet: Department of Insurance: Casualty Insurance Contracts
806 KAR 20:020 (Cancellation and nonrenewal of automobile liability insurance policies.)

State Racing Commission: Thoroughbred Racing Rules
810 KAR 1:013 (Entries, subscriptions and declarations.)

Department of Housing, Buildings and Construction: Local Fire Departments
815 KAR 45:030 (Fire protection instructors' qualifications and certification.)
815 KAR 45:035 (Education incentive.)

Cabinet for Human Resources: Department for Health Services: Hospitalization of Mentally Ill and Mentally Retarded
902 KAR 12:080 (Policies and procedures for mental health/mental retardation facilities.)
Food and Cosmetics
902 KAR 45:110 (Inspection fees; permit fees; food plants, markets, warehouses, and distributors, vending machine companies and machines.)
Department for Employment Services: Unemployment Insurance
903 KAR 5:260 (Unemployment Insurance Procedures.)
Department for Social Services: Children's Residential Services
905 KAR 7:230 (Education of Youth in the children's residential services programs.) Mr. V. Wayne Young, of the Kentucky Association of School Administrators, requested the Subcommittee to request LRC to refer this administrative regulation to the Interim Joint Committee on Education. He stated that although the Interim Joint Committee on Health and Welfare would review this administrative regulation, it dealt primarily with educational matters; local districts would have to insure that there was no conflict with federal mandates. The Subcommittee approved a motion to request LRC to refer this administrative regulation for its second review to the Interim Joint Committee on Education.

The Subcommittee had no objections to emergency regulations which had been filed.

Other Business:

Public Protection and Regulation Cabinet: Department of Financial Institutions: Division of Banking and Division of Thrift Institutions
808 KAR 1:060 (Remote service units.) On April 15, 1988, as provided by KRS 13A.030(1)(a), (b) and (c), the Subcommittee sent a letter to the Commissioner of the Department of Financial Institutions requesting that he provide the Subcommittee with an explanation of how this administrative regulation complied with KRS 287.180 and

290.055(2). The Subcommittee felt that specific authorization to establish remote service units was required. Since House Bill 652 was not enacted during the 1988 Regular Session, such specific authority was lacking.

Representative Bruce stated that the Subcommittee had not received a response. The Subcommittee approved a motion inviting the Commissioner to the August 3, 1988, meeting of the Subcommittee to explain its statutory authority for this administrative regulation. A copy of this letter and a copy of the administrative regulation is submitted with the administrative regulations reviewed at this meeting.

The Subcommittee adjourned at 10:50 a.m. until August 3, 1988.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following report(s) were forwarded to the Legislative Research Commission by the appropriate jurisdictional committee(s) and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

Interim Joint Committee on Health and Welfare
Meeting of June 22, 1988

The Interim Joint Committee on Health and Welfare met on June 22, 1988, to review administrative regulations assigned and submits this report:

The Committee determined that the following administrative regulations complied with KRS Chapter 13A:

902 KAR 4:030
902 KAR 4:060
902 KAR 10:021 & E
902 KAR 10:030 & E
902 KAR 10:060 & E
902 KAR 10:121 & E
902 KAR 10:130 & E
902 KAR 12:080
902 KAR 13:030
902 KAR 20:132
902 KAR 20:135 & E
902 KAR 25:011
902 KAR 55:010 & E
902 KAR 100:012 & E
902 KAR 105:020 & E
904 KAR 2:020
907 KAR 1:004 & E
907 KAR 1:011 & E
907 KAR 1:013 & E
907 KAR 1:036 & E

The Committee had no objections to emergency regulations which had been filed.

The Committee adjourned at 4:00 p.m. until August 17, 1988.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates.....B2

KRS Index.....B7

Subject Index to Volume 14.....B11

LOCATOR INDEX -- EFFECTIVE DATES

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

VOLUME 14

Emergency Regulation	14 Ky.R. Page No.	Effective Date
201 KAR 25:021E	2149	4-19-88
Replaced	2036	7-1-88
201 KAR 26:240E	2005	4-14-88
705 KAR 2:120E	2149	5-9-88
803 KAR 25:011E	2150	4-19-88
902 KAR 3:060E	2158	4-18-88
Withdrawn		6-13-88
902 KAR 3:210E	2159	4-18-88
Withdrawn		6-13-88
902 KAR 10:030E	2161	4-15-88
Replaced	2072	6-22-88
902 KAR 10:060E	2162	4-15-88
Replaced	2073	6-22-88
902 KAR 10:121E	2162	4-15-88
Replaced	2139	6-22-88
902 KAR 11:010E	2163	4-18-88
902 KAR 20:135E	2009	3-30-88
Replaced	2081	6-22-88
902 KAR 45:110E	2163	4-15-88
902 KAR 45:120E	2164	4-15-88
902 KAR 55:010E	2165	4-18-88
Replaced	2084	6-22-88
902 KAR 100:012E	2166	4-18-88
Replaced	2085	6-22-88
902 KAR 105:020E	2167	4-18-88
Replaced	2087	6-22-88
903 KAR 1:010E	2168	4-18-88
905 KAR 1:091E	2169	4-18-88
905 KAR 1:180E	1064	11-10-87
905 KAR 2:010E	2173	4-18-88
907 KAR 1:004E	2009	4-7-88
Replaced	2106	6-22-88
907 KAR 1:011E	2016	4-7-88
Replaced	2112	6-22-88
907 KAR 1:013E	2020	4-7-88
Replaced	2116	6-22-88
907 KAR 1:036E	2021	4-7-88
Replaced	2119	6-22-88

Regulation	14 Ky.R. Page No.	Effective Date
103 KAR 18:141	2126	7-1-88
103 KAR 25:131	2127	7-1-88
201 KAR 3:080	2244	
201 KAR 9:101		
Amended	2191	
201 KAR 20:161		
Amended	2192	
201 KAR 20:215		
Amended	2193	
201 KAR 25:021		
Amended	2036	7-1-88
201 KAR 26:240	2128	
201 KAR 27:080	1995	6-1-88
301 KAR 2:045		
Amended	2036	7-1-88
301 KAR 2:047		
Amended	2038	7-1-88
301 KAR 2:111		
Amended	2042	7-1-88
301 KAR 2:170		
Amended	2045	7-1-88
301 KAR 2:230		
Amended	2050	7-1-88
301 KAR 3:021		
Amended	2051	7-1-88
301 KAR 3:030		
Amended	2053	7-1-88
302 KAR 20:058	2129	7-1-88
501 KAR 6:030		
Amended	2054	7-1-88
Amended	2195	
501 KAR 6:040		
Amended	2056	7-1-88
Amended	2197	
501 KAR 6:060		
Amended	2057	7-1-88
501 KAR 6:070	(See 15 Ky.R.)	
Amended	2198	
501 KAR 6:120		
Amended	2200	
603 KAR 5:066		
Amended	2061	7-1-88
603 KAR 5:070		
Amended	2202	
603 KAR 5:210		
Amended	2204	
603 KAR 5:230		
Amended	2206	
701 KAR 5:020		
Amended	2213	
702 KAR 1:115		
Amended	2214	
702 KAR 7:090		
Amended	1651	
704 KAR 3:290		
Amended	2215	
704 KAR 3:292		
Amended	2216	
704 KAR 15:080		
Amended	1652	
705 KAR 2:120		
Amended	2217	
709 KAR 1:050		
Amended	2218	
803 KAR 25:011	(See 15 Ky.R.)	
806 KAR 12:090		
Amended	2219	
806 KAR 20:010		
Amended	2222	
806 KAR 20:020	2245	
806 KAR 39:070	(See 15 Ky.R.)	
810 KAR 1:013		
Amended	2224	
815 KAR 45:015		
Amended	2227	
815 KAR 45:030		
Amended	2229	
815 KAR 45:035		
Amended	2230	
902 KAR 3:060		
Amended	2066	
Withdrawn		6-13-88
902 KAR 3:210		
Amended	2068	
Withdrawn		6-13-88

Regulation	14 Ky.R. Page No.	Effective Date
902 KAR 4:030		
Amended	2069	6-22-88
902 KAR 4:060		
Amended	2071	6-22-88
902 KAR 10:021	(See 15 Ky.R.)	
902 KAR 10:030		
Amended	2072	6-22-88
902 KAR 10:060		
Amended	2073	6-22-88
902 KAR 10:121	2139	6-22-88
902 KAR 10:130	(See 15 Ky.R.)	
902 KAR 11:010		
Amended	2073	
902 KAR 12:080		
Amended	2074	6-22-88
Amended	2233	
902 KAR 13:030		
Amended	2080	6-22-88
902 KAR 20:132		
Amended	2080	6-22-88
902 KAR 20:135		
Amended	2081	6-22-88
902 KAR 25:010		
Repealed	2140	6-22-88
902 KAR 25:011	2140	6-22-88
902 KAR 45:110		
Amended	2082	
902 KAR 45:120		
Amended	2083	
902 KAR 55:010		
Amended	2084	6-22-88
902 KAR 100:012		
Amended	2085	6-22-88
902 KAR 105:020		
Amended	2087	6-22-88
903 KAR 1:010		
Amended	2088	
903 KAR 5:260		
Amended	2241	
904 KAR 2:020		
Amended	2091	6-22-88
905 KAR 1:091		
Amended	2094	
905 KAR 2:010		
Amended	2098	
905 KAR 7:230	(See 15 Ky.R.)	
907 KAR 1:004		
Amended	2106	6-22-88
907 KAR 1:011		
Amended	2112	6-22-88
907 KAR 1:013		
Amended	2116	6-22-88
907 KAR 1:036		
Amended	2119	6-22-88

VOLUME 15

Emergency Regulation	15 Ky.R. Page No.	Effective Date
101 KAR 1:325E	107	6-16-88
105 KAR 1:010E	108	6-22-88
107 KAR 1:050E	3	6-10-88
201 KAR 8:400E	3	6-13-88
201 KAR 8:410E	4	6-13-88
201 KAR 10:050E	5	6-2-88
302 KAR 20:056E	110	6-27-88
401 KAR 30:010E	111	7-14-88
401 KAR 31:020E	121	7-14-88
401 KAR 32:040E	122	7-14-88
401 KAR 34:090E	123	7-14-88
401 KAR 35:070E	131	7-14-88
401 KAR 35:090E	137	7-14-88
501 KAR 9:010E	144	6-20-88
501 KAR 9:020E	145	6-20-88
501 KAR 9:030E	146	6-20-88
501 KAR 9:040E	147	6-20-88
501 KAR 9:050E	147	6-20-88
501 KAR 9:060E	150	6-20-88
501 KAR 9:070E	151	6-20-88
501 KAR 9:080E	152	6-20-88
501 KAR 9:090E	153	6-20-88
501 KAR 9:100E	154	6-20-88
501 KAR 9:110E	154	6-20-88
501 KAR 9:120E	155	6-20-88
501 KAR 9:130E	156	6-20-88
501 KAR 9:140E	156	6-20-88
501 KAR 9:150E	158	6-20-88
501 KAR 6:020E	6	6-14-88
501 KAR 6:080E	7	6-14-88
501 KAR 6:130E	8	6-14-88
600 KAR 1:080E	161	7-1-88
600 KAR 2:020E	161	7-1-88
601 KAR 1:005E	9	6-1-88
601 KAR 13:020E	162	7-15-88
603 KAR 5:072E	11	6-14-88
705 KAR 5:140E	164	7-15-88
707 KAR 1:110E	165	7-15-88
803 KAR 25:080E	169	7-13-88
806 KAR 4:010E	174	7-15-88
806 KAR 13:110E	175	7-15-88
901 KAR 5:110E	176	7-13-88
902 KAR 3:060E	177	6-20-88
902 KAR 3:075E	178	6-20-88
902 KAR 3:115E	179	6-20-88
902 KAR 3:205E	181	6-20-88
902 KAR 3:210E	182	7-1-88
902 KAR 3:225E	184	6-20-88
902 KAR 3:250E	185	6-20-88
902 KAR 10:021E		4-15-88
Replaced	17	6-22-88
902 KAR 10:081E	186	7-13-88
902 KAR 10:085E	194	7-13-88
902 KAR 10:130E		4-15-88
Replaced	17	6-22-88
902 KAR 17:010E	214	7-6-88
902 KAR 50:120E	214	7-15-88
903 KAR 5:260E	11	5-20-88
903 KAR 5:270E	218	6-20-88
904 KAR 2:016E	219	7-1-88
904 KAR 2:116E	224	7-13-88
907 KAR 1:004E	227	7-1-88
907 KAR 1:008E	233	7-1-88
907 KAR 1:013E	233	7-1-88
907 KAR 1:015E	235	7-1-88
907 KAR 1:020E	236	7-1-88
907 KAR 1:028E	237	7-1-88
907 KAR 1:029E	238	7-1-88
907 KAR 1:031E	238	7-1-88
907 KAR 1:036E	240	7-1-88
907 KAR 1:042E	247	7-1-88
907 KAR 1:170E	247	7-1-88
907 KAR 1:360E	248	7-1-88

Regulation	15 Ky.R. Page No.	Effective Date
101 KAR 1:320		
Amended	264	
101 KAR 1:325		
Amended	266	
101 KAR 1:360		
Amended	267	
103 KAR 16:100		
Amended	271	
103 KAR 16:110		
Amended	272	
103 KAR 16:130		
Amended	273	
103 KAR 16:145	691	
103 KAR 43:250	96	
103 KAR 43:260	96	
105 KAR 1:010		
Amended	31	
107 KAR 1:050	97	
201 KAR 8:400	99	
201 KAR 8:410	99	
201 KAR 10:050		
Amended	33	
201 KAR 26:240		
As Amended	250	
302 KAR 20:056		
Amended	275	
306 KAR 2:010	692	
307 KAR 1:010		
Amended	276	
401 KAR 4:100		
Amended	281	
401 KAR 4:110	693	
401 KAR 4:120	695	
401 KAR 4:130	703	
401 KAR 4:140	706	
401 KAR 5:005		
Amended	282	
401 KAR 5:010		
Amended	285	
401 KAR 5:085		
Amended	289	
401 KAR 6:015		
Amended	292	
401 KAR 6:030		
Implied repeal		7-15-88
401 KAR 6:040		
Amended	309	
401 KAR 6:300		
Amended	314	
401 KAR 30:010		
Amended	315	
401 KAR 31:010		
Amended	327	
401 KAR 31:020		
Amended	337	
401 KAR 32:010		
Amended	339	
401 KAR 32:040		
Amended	341	
401 KAR 34:090		
Amended	343	
401 KAR 35:070		
Amended	351	
401 KAR 35:090		
Amended	358	
401 KAR 39:010		
Amended	365	
401 KAR 39:020		
Amended	367	
401 KAR 39:030		
Amended	369	
401 KAR 39:060		
Amended	371	
401 KAR 39:070		
Amended	372	
401 KAR 39:080		
Amended	374	
401 KAR 39:090		
Amended	375	
401 KAR 39:110	713	
401 KAR 39:120	715	
401 KAR 47:060		
Amended	377	
401 KAR 50:015		
Amended	379	
401 KAR 50:036		
Amended	384	
405 KAR 7:015		
Amended	390	
405 KAR 7:020		
Amended	392	
405 KAR 7:030		
Amended	402	
405 KAR 7:090		
Amended	404	
405 KAR 8:010		
Amended	414	
405 KAR 8:020		
Amended	428	
405 KAR 8:050		
Amended	432	
405 KAR 10:010		
Amended	438	
405 KAR 10:020		
Amended	441	
405 KAR 10:030		
Amended	443	
405 KAR 10:040		
Amended	447	
405 KAR 10:050		
Amended	451	
405 KAR 16:010		
Amended	453	
405 KAR 16:070		
Amended	455	
405 KAR 16:080		
Amended	457	
405 KAR 16:100		
Amended	460	
405 KAR 16:110		
Amended	464	
405 KAR 16:120		
Amended	466	
405 KAR 16:150		
Amended	471	
405 KAR 16:190		
Amended	473	
405 KAR 18:010		
Amended	478	
405 KAR 18:070		
Amended	480	
405 KAR 18:080		
Amended	482	
405 KAR 18:100		
Amended	485	
405 KAR 18:110		
Amended	489	
405 KAR 18:120		
Amended	491	
405 KAR 18:150		
Amended	496	

Regulation	15 Ky.R. Page No.	Effective Date
405 KAR 18:190		
Amended	498	
405 KAR 20:010		
Amended	502	
405 KAR 20:060		
Amended	505	
405 KAR 24:020		
Amended	508	
405 KAR 24:030		
Amended	511	
405 KAR 24:040		
Amended	515	
501 KAR 6:020		
Amended	34	
501 KAR 6:030		
Amended	518	
501 KAR 6:040		
Amended	36	
501 KAR 6:050		
Amended	520	
501 KAR 6:060		
Amended	37	
Amended	522	
501 KAR 6:070		
As Amended	14	7-1-88
Amended	39	
Amended	523	
501 KAR 6:080		
Amended	41	
501 KAR 6:110		
Amended	525	
501 KAR 6:120		
Amended	527	
501 KAR 6:130		
Amended	41	
Amended	529	
501 KAR 6:140		
Amended	42	
Amended	530	
501 KAR 9:010	716	
501 KAR 9:020	717	
501 KAR 9:030	719	
501 KAR 9:040	720	
501 KAR 9:050	722	
501 KAR 9:060	725	
501 KAR 9:070	726	
501 KAR 9:080	727	
501 KAR 9:090	729	
501 KAR 9:100	730	
501 KAR 9:110	731	
501 KAR 9:120	732	
501 KAR 9:130	734	
501 KAR 9:140	735	
501 KAR 9:150	737	
600 KAR 1:080		
Amended	44	
600 KAR 2:020		
Amended	532	
600 KAR 4:010		
Amended	534	
601 KAR 1:005		
Amended	45	
601 KAR 1:025		
Amended	538	
601 KAR 9:090		
Amended	540	
601 KAR 9:140	741	
601 KAR 13:020		
Amended	541	
601 KAR 14:010		
Amended	543	
603 KAR 3:051		
Amended	544	
603 KAR 5:070		
Amended	549	
603 KAR 5:072	101	
603 KAR 5:115		
Amended	551	
704 KAR 15:010		
Amended	553	
704 KAR 20:005		
Amended	554	
704 KAR 20:015		
Amended	555	
704 KAR 20:020		
Amended	556	
704 KAR 20:025		
Amended	558	
704 KAR 20:120		
Amended	560	
704 KAR 20:145		
Amended	561	
704 KAR 20:146		
Amended	562	
704 KAR 20:150		
Amended	563	
704 KAR 20:240		
Amended	564	
704 KAR 20:460		
Amended	565	
704 KAR 20:490	741	
704 KAR 20:500	742	
704 KAR 20:510	743	
705 KAR 4:010		
Amended	567	
705 KAR 5:140	744	
707 KAR 1:051		
Amended	569	
707 KAR 1:060		
Amended	580	
707 KAR 1:080		
Amended	581	
707 KAR 1:110		
Amended	582	
803 KAR 2:020		
Amended	47	
803 KAR 25:011		
Amended	19	
As Amended	250	
803 KAR 25:080	745	
806 KAR 3:130	751	
806 KAR 3:140	752	
806 KAR 4:010	753	
806 KAR 12:090		
Amended	260	
806 KAR 13:110	755	
806 KAR 20:010		
Amended	262	
806 KAR 39:070		
As Amended	15	7-1-88
815 KAR 7:020		
Amended	586	
815 KAR 10:020		
Amended	591	
815 KAR 20:060		
Amended	601	
815 KAR 20:100		
Amended	603	
815 KAR 20:120		
Amended	605	
815 KAR 20:191		
Amended	613	

Regulation	15 Ky.R. Page No.	Effective Date
901 KAR 5:110	757	
902 KAR 2:110	758	
902 KAR 2:120	759	
902 KAR 3:060		
Amended	54	
902 KAR 3:075		
Amended	57	
902 KAR 3:080		
Amended	58	
902 KAR 3:115		
Amended	60	
902 KAR 3:205		
Amended	62	
902 KAR 3:210		
Amended	63	
902 KAR 3:225		
Amended	66	
902 KAR 3:230		
Amended	67	
902 KAR 3:250		
Amended	69	
902 KAR 8:020		
Amended	71	
902 KAR 8:030		
Amended	73	
902 KAR 10:021		
As Amended	17	6-22-88
902 KAR 10:081		
Amended	619	
902 KAR 10:085		
Amended	628	
902 KAR 10:130		
As Amended	17	6-22-88
902 KAR 12:080		
Amended	74	
902 KAR 17:010		
Amended	80	
902 KAR 20:006		
Amended	82	
902 KAR 20:126		
Amended	88	
902 KAR 20:127		
Amended	89	
902 KAR 20:132		
Amended	92	
902 KAR 20:135		
Amended	93	
902 KAR 45:120		
Amended	258	
902 KAR 50:120	763	
903 KAR 5:100		
Amended	648	
903 KAR 5:270		
Amended	93	
904 KAR 2:016		
Amended	650	
904 KAR 2:020		
Amended	656	
904 KAR 2:116		
Amended	658	
904 KAR 2:140		
Amended	94	
904 KAR 2:170		
Amended	663	
904 KAR 2:202	102	
905 KAR 7:230		
Amended	27	
906 KAR 1:040	767	
907 KAR 1:004		
Amended	664	
907 KAR 1:008		
Amended	670	
907 KAR 1:013		
Amended	671	
907 KAR 1:015		
Amended	674	
907 KAR 1:020		
Amended	675	
907 KAR 1:028		
Amended	676	
907 KAR 1:029		
Amended	678	
907 KAR 1:031		
Amended	678	
907 KAR 1:036		
Amended	680	
907 KAR 1:042		
Amended	688	
907 KAR 1:170		
Amended	689	
907 KAR 1:360	768	

KRS INDEX

KRS Section	Regulation
Chapter 13A	307 KAR 1:010
	600 KAR 1:080
16.505-16.652	105 KAR 1:010
18A.075	101 KAR 1:320
	101 KAR 1:360
18A.0751	101 KAR 1:320
	101 KAR 1:325
	101 KAR 1:360
18A.095	101 KAR 1:360
18A.111	101 KAR 1:320
	101 KAR 1:325
42.455	603 KAR 5:115
61.510-61.705	105 KAR 1:010
78.510-78.852	105 KAR 1:010
Chapter 96A	600 KAR 4:010
138.224	103 KAR 43:250
138.226	103 KAR 43:250
	103 KAR 43:260
138.240	103 KAR 43:260
138.270	103 KAR 43:250
	103 KAR 43:260
141.120	103 KAR 16:100
	103 KAR 16:110
	103 KAR 16:130
	103 KAR 16:145
146.220	401 KAR 4:110
	401 KAR 4:120
	401 KAR 4:130
	401 KAR 4:140
146.240	401 KAR 4:110
146.241	401 KAR 4:100
146.250	401 KAR 4:100
	401 KAR 4:110
146.260	401 KAR 4:110
146.270	401 KAR 4:110
	401 KAR 4:120
	401 KAR 4:130
	401 KAR 4:140
146.280	401 KAR 4:140
146.290	401 KAR 4:110
	401 KAR 4:120
	401 KAR 4:130
	401 KAR 4:140
146.310	401 KAR 4:110
	401 KAR 4:120
146.350	401 KAR 4:110
	401 KAR 4:120
	401 KAR 4:140
146.360	401 KAR 4:110
146.990	401 KAR 4:140
Chapter 152	306 KAR 2:010
156.031	705 KAR 4:010
156.035	707 KAR 1:060
	707 KAR 1:080
157.200-157.290	707 KAR 1:051
	707 KAR 1:060
	707 KAR 1:080
157.360	707 KAR 1:051
157.390	704 KAR 20:015
	704 KAR 20:020
	704 KAR 20:025
161.020	704 KAR 20:005
	704 KAR 20:120
	704 KAR 20:145
	704 KAR 20:146
	704 KAR 20:150
	704 KAR 20:240
	704 KAR 20:460
	704 KAR 20:490
	704 KAR 20:500
	704 KAR 20:510
161.025	704 KAR 15:010
	704 KAR 20:005
	704 KAR 20:145
	704 KAR 20:146
	704 KAR 20:150
	704 KAR 20:240
	704 KAR 20:460
	704 KAR 20:490
	704 KAR 20:500
	704 KAR 20:510
161.027	704 KAR 20:460
161.030	704 KAR 15:010
	704 KAR 20:005
	704 KAR 20:020
	704 KAR 20:120
	704 KAR 20:145
	704 KAR 20:146
	704 KAR 20:150
	704 KAR 20:240
	704 KAR 20:460
	704 KAR 20:490
	704 KAR 20:500
	704 KAR 20:510
161.100	704 KAR 20:120
163.020	705 KAR 4:010
163.030	705 KAR 4:010
163.087	705 KAR 4:010
163.089	705 KAR 5:140
167.150	707 KAR 1:110
Chapter 174	600 KAR 4:010
174.400-174.435	601 KAR 1:025
175.450	600 KAR 2:020
175.470	600 KAR 2:020
175.520	600 KAR 2:020
Chapter 176	600 KAR 4:010
Chapter 177	600 KAR 4:010
177.905-177.950	603 KAR 3:051
177.977	603 KAR 5:115
177.9771	603 KAR 5:115
Chapter 183	600 KAR 4:010
Chapter 186	601 KAR 9:140
186.570	601 KAR 13:020
186.572	601 KAR 13:020
Chapter 186A	601 KAR 9:140
186A.115	601 KAR 9:090
189.222	603 KAR 5:070
189.231	603 KAR 5:072
189.285	601 KAR 14:010
189.990	601 KAR 13:020
194.030	904 KAR 2:140
	904 KAR 2:202
194.050	904 KAR 2:116
Chapter 196	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:080
	501 KAR 6:110
	501 KAR 6:120
	501 KAR 6:130
	501 KAR 6:140
Chapter 197	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:080
	501 KAR 6:110
	501 KAR 6:120

KRS Section	Regulation
Chapter 197 (cont'd)	501 KAR 6:130
	501 KAR 6:140
Chapter 198	815 KAR 7:020
Chapter 205	904 KAR 2:020
	904 KAR 2:140
	904 KAR 2:170
205.200	904 KAR 2:016
205.210	904 KAR 2:016
205.520	907 KAR 1:004
	907 KAR 1:008
	907 KAR 1:013
	907 KAR 1:015
	907 KAR 1:028
	907 KAR 1:029
	907 KAR 1:031
	907 KAR 1:036
	907 KAR 1:042
	907 KAR 1:170
	907 KAR 1:360
205.550	907 KAR 1:020
205.560	907 KAR 1:020
Chapter 210	902 KAR 12:080
210.610-210.680	902 KAR 3:205
	902 KAR 3:210
	902 KAR 3:225
	902 KAR 3:230
	902 KAR 3:250
210.990	902 KAR 3:205
	902 KAR 3:210
	902 KAR 3:225
	902 KAR 3:230
	902 KAR 3:250
211.170	902 KAR 8:030
211.180	902 KAR 2:110
	902 KAR 2:120
211.350-211.380	902 KAR 10:081
	902 KAR 10:085
211.990	902 KAR 10:081
	902 KAR 10:085
Chapter 212	902 KAR 8:020
212.170	902 KAR 8:030
212.870	902 KAR 8:030
Chapter 213	901 KAR 5:110
214.010	902 KAR 2:110
	902 KAR 2:120
214.020	902 KAR 2:110
	902 KAR 2:120
216B.010-216B.130	906 KAR 1:040
216B.010-216B.131	902 KAR 20:006
	902 KAR 20:126
	902 KAR 20:127
	902 KAR 20:132
	902 KAR 20:135
216B.040	902 KAR 17:010
216B.990	902 KAR 20:006
	902 KAR 20:126
	902 KAR 20:127
	902 KAR 20:132
	902 KAR 20:135
Chapter 217C	902 KAR 50:120
222.210-222.310	902 KAR 3:060
	902 KAR 3:075
	902 KAR 3:080
	902 KAR 3:115
Chapter 223	401 KAR 6:040
223.400-223.460	401 KAR 6:300
223.991	401 KAR 6:300
Chapter 224	401 KAR 5:005
	401 KAR 6:015
	401 KAR 6:040
224.020	401 KAR 5:085
224.033	401 KAR 5:085
	401 KAR 30:010
	401 KAR 34:090
	401 KAR 35:070
	401 KAR 35:090
	401 KAR 39:010
	401 KAR 39:020
	401 KAR 39:030
	401 KAR 39:060
	401 KAR 39:070
	401 KAR 39:080
	401 KAR 39:090
	401 KAR 39:110
	401 KAR 39:120
	405 KAR 7:090
224.034	401 KAR 5:085
224.045	401 KAR 4:120
224.060	401 KAR 5:085
224.135	401 KAR 5:010
224.071	401 KAR 32:010
	401 KAR 32:040
	401 KAR 34:090
	401 KAR 35:090
224.073	401 KAR 5:085
224.081	405 KAR 7:090
224.083	405 KAR 7:090
224.320	401 KAR 50:015
	401 KAR 50:036
224.330	401 KAR 50:015
	401 KAR 50:036
224.340	401 KAR 50:015
	401 KAR 50:036
224.830-224.877	401 KAR 31:010
	401 KAR 32:010
	401 KAR 32:040
	401 KAR 34:090
	401 KAR 35:070
	401 KAR 35:090
	401 KAR 39:010
	401 KAR 39:080
	401 KAR 39:090
	401 KAR 39:110
224.830-224.889	401 KAR 30:010
224.855	401 KAR 47:060
224.864	401 KAR 31:020
	401 KAR 39:020
	401 KAR 39:030
	401 KAR 39:060
	401 KAR 39:070
	401 KAR 39:120
	401 KAR 47:060
224.866	401 KAR 39:020
	401 KAR 39:030
	401 KAR 39:060
	401 KAR 39:070
	401 KAR 39:120
224.868	401 KAR 31:020
224.871	401 KAR 39:020
	401 KAR 39:030
	401 KAR 39:060
	401 KAR 39:070
	401 KAR 39:120
224.876	401 KAR 31:020
224.994	401 KAR 30:010
	401 KAR 31:010
	401 KAR 32:010
	401 KAR 32:040
	401 KAR 34:090
	401 KAR 35:070
	401 KAR 35:090
	401 KAR 39:010

KRS Section	Regulation
224.994 (cont'd)	401 KAR 39:020
	401 KAR 39:080
	401 KAR 39:090
	401 KAR 39:110
	401 KAR 39:120
Chapter 227	815 KAR 10:020
257.020	302 KAR 20:056
257.030	302 KAR 20:056
257.110	302 KAR 20:056
257.120	302 KAR 20:056
257.140	302 KAR 20:056
Chapter 281	601 KAR 1:005
281.600	603 KAR 5:072
304.3-245	806 KAR 3:130
304.3-315	806 KAR 3:140
304.4-010	806 KAR 4:010
304.13-051	806 KAR 13:110
313.150	201 KAR 8:400
313.160	201 KAR 8:410
Chapter 318	815 KAR 20:060
	815 KAR 20:100
	815 KAR 20:120
	815 KAR 20:191
323A.060	201 KAR 10:050
323A.070	201 KAR 10:050
323A.100	201 KAR 10:050
333.120	906 KAR 1:040
333.130	902 KAR 2:110
	902 KAR 2:120
Chapter 338	803 KAR 2:020
341.350	903 KAR 5:100
341.380	903 KAR 5:100
	903 KAR 5:270
Chapter 342	803 KAR 25:011
	803 KAR 25:080
346.185	107 KAR 1:050
Chapter 350	405 KAR 7:015
	405 KAR 7:020
350.010	405 KAR 7:030
350.020	405 KAR 8:010
	405 KAR 10:010
	405 KAR 10:020
	405 KAR 10:030
	405 KAR 10:050
	405 KAR 16:010
	405 KAR 16:070
	405 KAR 16:150
	405 KAR 16:190
	405 KAR 18:010
	405 KAR 18:070
	405 KAR 18:150
	405 KAR 18:190
350.028	405 KAR 7:030
	405 KAR 7:090
350.055	405 KAR 8:010
350.057	405 KAR 7:030
	405 KAR 8:020
	405 KAR 20:010
350.060	405 KAR 7:030
	405 KAR 8:010
	405 KAR 10:010
	405 KAR 10:020
	405 KAR 10:030
	405 KAR 10:040
	405 KAR 10:050
350.062	405 KAR 10:010
350.064	405 KAR 10:010
	405 KAR 10:020
	405 KAR 10:030
	405 KAR 10:040
	405 KAR 10:050

KRS Section	Regulation
350.070	405 KAR 7:090
	405 KAR 8:010
350.085	405 KAR 8:010
	405 KAR 16:080
	405 KAR 18:080
350.090	405 KAR 7:090
	405 KAR 8:010
	405 KAR 16:010
	405 KAR 16:070
	405 KAR 16:150
	405 KAR 18:010
	405 KAR 18:070
	405 KAR 18:150
	405 KAR 20:060
350.093	405 KAR 7:090
	405 KAR 8:050
	405 KAR 10:020
	405 KAR 10:040
	405 KAR 10:050
	405 KAR 16:010
	405 KAR 16:190
	405 KAR 18:010
	405 KAR 18:190
	405 KAR 20:060
350.095	405 KAR 10:020
	405 KAR 10:050
350.100	405 KAR 10:030
	405 KAR 16:070
	405 KAR 16:080
	405 KAR 16:100
	405 KAR 16:110
	405 KAR 16:190
	405 KAR 18:070
	405 KAR 18:080
	405 KAR 18:100
	405 KAR 18:110
	405 KAR 18:190
	405 KAR 20:060
350.110	405 KAR 10:020
	405 KAR 10:030
	405 KAR 10:040
	405 KAR 10:050
350.113	405 KAR 10:040
350.130	405 KAR 7:090
	405 KAR 8:010
	405 KAR 10:050
350.135	405 KAR 8:010
350.151	405 KAR 7:030
	405 KAR 10:010
	405 KAR 10:040
	405 KAR 10:050
	405 KAR 16:010
	405 KAR 18:010
	405 KAR 18:070
	405 KAR 18:100
	405 KAR 18:110
	405 KAR 18:120
	405 KAR 18:150
	405 KAR 18:190
350.255	405 KAR 7:090
350.405	405 KAR 16:070
	405 KAR 16:080
	405 KAR 16:110
	405 KAR 16:190
	405 KAR 18:070
	405 KAR 18:080
	405 KAR 18:110
	405 KAR 18:190
	405 KAR 20:060
350.410	405 KAR 16:010
	405 KAR 16:190
	405 KAR 18:010
	405 KAR 18:190

KRS Section	Regulation
350.420	405 KAR 16:070
	405 KAR 16:080
	405 KAR 16:100
	405 KAR 16:110
	405 KAR 18:070
	405 KAR 18:080
	405 KAR 18:100
	405 KAR 18:110
350.430	405 KAR 16:120
	405 KAR 18:120
350.440	405 KAR 16:010
	405 KAR 18:010
350.445	405 KAR 8:050
	405 KAR 16:010
	405 KAR 20:060
350.450	405 KAR 8:010
	405 KAR 8:050
	405 KAR 16:010
	405 KAR 16:190
	405 KAR 18:190
350.455	405 KAR 16:100
	405 KAR 18:100
350.465	405 KAR 7:030
	405 KAR 7:090
	405 KAR 8:010
	405 KAR 8:050
	405 KAR 10:010
	405 KAR 10:020
	405 KAR 10:030
	405 KAR 10:040
	405 KAR 10:050
	405 KAR 16:010
	405 KAR 16:070
	405 KAR 16:080
	405 KAR 16:100
	405 KAR 16:110
	405 KAR 16:120
	405 KAR 16:150
	405 KAR 16:190
	405 KAR 18:010
	405 KAR 18:070
	405 KAR 18:080
	405 KAR 18:100
	405 KAR 18:110
	405 KAR 18:150
	405 KAR 18:190
	405 KAR 20:010
	405 KAR 20:060
	405 KAR 24:020
	405 KAR 24:030
	405 KAR 24:040
350.610	405 KAR 8:020
	405 KAR 24:020
	405 KAR 24:040
350.990	405 KAR 7:090
Chapter 405	904 KAR 2:020
	904 KAR 2:170
Chapter 406	904 KAR 2:020
	904 KAR 2:170
Chapter 407	904 KAR 2:020
	904 KAR 2:170
Chapter 439	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:080
	501 KAR 6:110
	501 KAR 6:120
	501 KAR 6:130
	501 KAR 6:140

KRS Section	Regulation
Chapter 441	501 KAR 9:150
441.057	501 KAR 9:010
	501 KAR 9:020
	501 KAR 9:030
	501 KAR 9:040
	501 KAR 9:050
	501 KAR 9:060
	501 KAR 9:070
	501 KAR 9:080
	501 KAR 9:090
	501 KAR 9:100
	501 KAR 9:110
	501 KAR 9:120
	501 KAR 9:130
	501 KAR 9:140
Chapter 605	905 KAR 7:230
Chapter 610	905 KAR 7:230
Chapter 630	905 KAR 7:230
Chapter 635	905 KAR 7:230
Chapter 640	905 KAR 7:230
Chapter 645	905 KAR 7:230
1988 Acts, c. 437	902 KAR 3:210
13 CFR 121	600 KAR 4:010
42 CFR 431.615	907 KAR 1:360
42 CFR 435.831	904 KAR 2:016
45 CFR 233	904 KAR 2:016
45 CFR 300-307	904 KAR 2:170
45 CFR 301-307	904 KAR 2:020
49 CFR	601 KAR 1:025
49 CFR 23	600 KAR 4:010
49 CFR 571	601 KAR 14:010
20 U.S.C. 1415	707 KAR 1:110
P.L. 97-35	904 KAR 2:116

SUBJECT INDEX

AGRICULTURE
Livestock sanitation; 302 KAR Chapter 20

AIR QUALITY
Administrative Procedures
  Permit, exemption fees; 401 KAR 50:036
  Reference material; 401 KAR 50:015

ARCHITECTS
(See also Landscape Architects)

BUSES
Annual inspection; 603 KAR 5:072 & E

CERTIFICATE OF NEED
(See Health Services, Health Economics Control)

CHILDREN'S RESIDENTIAL SERVICES
(See Social Services)

COMMUNICABLE DISEASES
(See Health Services)

CORRECTIONS
Juvenile Holding Facilities
  Administration, management; 501 KAR 9:020 & E
  Admission, release; 501 KAR 9:120 & E
  Classification; 501 KAR 9:110 & E
  Definitions; 501 KAR 9:010 & E
  Fiscal management; 501 KAR 9:030 & E
  Food services; 501 KAR 9:100 & E
  Hearings, procedures, disposition; 501 KAR 9:150 & E
  Juvenile rights; 501 KAR 9:140 & E
  Medical services; 501 KAR 9:090 & E
  Personnel; 501 KAR 9:040 & E
  Physical plant; 501 KAR 9:050 & E
  Programs, services; 501 KAR 9:130 & E
  Safety, emergency procedures; 501 KAR 9:070 & E
  Sanitation, hygiene; 501 KAR 9:080 & E
  Security, control; 501 KAR 9:060 & E
Policies and Procedures
  Bell County Forestry Camp; 501 KAR 6:140
  Blackburn Correctional Complex; 501 KAR 6:120
  Cabinet; 501 KAR 6:020 & E
  Cabinet manuals; 501 KAR 6:080 & E
  Correctional Institute for Women; 501 KAR 6:070
  Kentucky State Reformatory; 501 KAR 6:030
  Luther Luckett Correctional Complex; 501 KAR 6:050
  Northpoint Training Center; 501 KAR 6:060
  Roederer Farm Center; 501 KAR 6:110
  State Penitentiary; 501 KAR 6:040
  Western Kentucky Farm Center; 501 KAR 6:130 & E

CRIME VICTIMS COMPENSATION
Claims, Awards
  Prorating awards; 107 KAR 1:050 & E

DENTISTRY
Complaint procedure; 201 KAR 8:400 & E
Disciplinary hearings; 201 KAR 8:410 and E

ECONOMIC DEVELOPMENT
Business Development
  Bond project reporting; 306 KAR 2:010
Development Finance Authority
  Bond financed loan program; 307 KAR 1:010

EDUCATION AND HUMANITIES CABINET
Exceptional Children
  Exceptional, handicapped; 707 KAR Chapter 1
Instruction
  Teacher certification; 704 KAR Chapter 20
  Teacher education; 704 KAR Chapter 15
Vocational Education
  Instructional programs; 705 KAR Chapter 4
  State-operated schools; 705 KAR Chapter 5

EMPLOYEES, STATE
(See also Personnel)
Personnel Rules
  Board; 101 KAR Chapter 1
Retirement
  Contributions, interest rates; 105 KAR 1:010

EMPLOYMENT SERVICES
Unemployment Insurance
  Claimant reporting requirements; 903 KAR 5:100
  Maximum weekly benefit rates; 903 KAR 5:270

EXCEPTIONAL CHILDREN
Appeals board; 707 KAR 1:080
Identification, evaluation, placement; 707 KAR 1:060
Programs; 707 KAR 1:051
School for the Blind; 707 KAR 1:110 & E

HEALTH BOARDS, LOCAL
(See Health Services)

HEALTH PLAN, STATE
(See Health Services)

HEALTH SERVICES
Communicable Diseases
  Blood-transmissible; 902 KAR 2:110
  Blood donor forms; 902 KAR 2:120
Food and Sanitation
  On-site sewage disposal; 902 KAR 10:081 & E; 902 KAR 10:085 & E
Health Economics Control
  Certificate of need application fee schedule; 902 KAR 20:135
  Certificate of need expenditure minimums; 902 KAR 20:132
  Certificate of need hearings; 902 KAR 20:127
  Certificate of need process; 902 KAR 20:006
  Licensure hearings; 902 KAR 20:126
Local Boards of Health
  Merit system; 902 KAR 8:030
  Policies, procedures; 902 KAR 8:020
Mentally Ill, Retarded, Hospitalization
  Facility policies, procedures; 902 KAR 12:080
Milk, Milk Products
  Unpasteurized goat milk; 902 KAR 50:120 & E
State Health Plan
  Plan; 902 KAR 17:010
Substance Abuse
  Client's rights; 902 KAR 3:080; 902 KAR 3:230
  Day/night outpatient treatment; 902 KAR 3:115
  Definitions; 902 KAR 3:205
  Licensing procedures; 902 KAR 3:060; 902 KAR 3:210
  Nonresidential day care; 902 KAR 3:250
  Quality assurance; 902 KAR 3:075; 902 KAR 3:225
Vital Statistics
  Blood, body fluid precautions; 901 KAR 5:110 & E

HIGHWAYS
Traffic
  Bus inspection; 603 KAR 5:027 & E
  Coal-haul highways; 603 KAR 5:115
  Truck dimension limits; 603 KAR 5:070
Maintenance
  Recyclers; 603 KAR 3:051

HOUSING, BUILDINGS AND CONSTRUCTION
Building Code
  Code; 815 KAR 7:020
Plumbing
  Joints, connections; 815 KAR 20:100
  Minimum fixture requirements; 815 KAR 20:191
  Quality, weight of materials; 815 KAR 20:060
  Water supply, distribution; 815 KAR 20:120
Standards of Safety
  Fire safety standards; 815 KAR 10:020

HUMAN RESOURCES
Employment Services
  Unemployment insurance; 903 KAR Chapter 5
Health Services
  Communicable diseases; 902 KAR Chapter 2
  Food, sanitation; 902 KAR Chapter 10
  Health economics control; 902 KAR Chapter 20
  Local boards of health; 902 KAR Chapter 8
  Mentally ill, retarded, hospitalization; 902 KAR Chapter 12
  Milk, milk products; 902 KAR Chapter 50
  State health plan; 902 KAR Chapter 17
  Substance abuse; 902 KAR Chapter 3
  Vital statistics; 901 KAR Chapter 5
Inspector General; 906 KAR Chapter 1
Medicaid services; 907 KAR Chapter 1
Social Insurance
  Public assistance; 904 KAR Chapter 2
Social Services
  Children's residential services; 905 KAR Chapter 7

INSPECTOR GENERAL
Blood establishment licensure; 906 KAR 1:040

INSTRUCTION (Education)
Teacher Certification
  Communication disorders; 704 KAR 20:500
  Emergency certification; 704 KAR 20:120
  Exceptional children recruitment plan; 704 KAR 20:510
  Librarians; 704 KAR 20:145; 704 KAR 20:146; 704 20:150
  Librarian recruitment plan; 704 KAR 20:490
  Principal certification; 704 KAR 20:460
  Professional school personnel; 704 KAR 20:005
  Provisional certification; 704 KAR 20:020
  Rank I classification; 704 KAR 20:015
  Rank II classification; 704 KAR 20:020
  Speech, communication disorders; 704 KAR 20:240
  Vocational trade instructors; 704 KAR 20:025
Teacher Education
  Institution accreditation; 704 KAR 15:010

INSURANCE
Authorization of Insurers
  Closed claim reporting; 806 KAR 3:130
  Statistical reports; 806 KAR 3:140
Fees and Taxes
  Department fees; 806 KAR 4:010 & E
Rates, Rating Organizations
  Flex rating; 806 KAR 13:110 & E

JAILS
(See Corrections)

LABOR
Occupational safety, health; 803 KAR Chapter 2
Workers' compensation; 803 KAR Chapter 25

LANDSCAPE ARCHITECTS
Fees; 201 KAR 10:050 & E

LIVESTOCK SANITATION
Brucellosis negative exposure; 302 KAR 20:056 & E

MEDICAID SERVICES
Drugs; 907 KAR 1:020 & E
Home, community based; 907 KAR 1:170 & E
Home health; 907 KAR 1:031 & E
Hospital furnished skilled nursing, intermediate care; 907 KAR 1:042 & E
Hospital inpatients; 907 KAR 1:013 & E
Hospital outpatients; 907 KAR 1:015 & E
Interagency agreements; 907 KAR 1:360 & E
Laboratory, x-ray; 907 KAR 1:028 & E; 907 KAR 1:029 & E
Medically needy; 907 KAR 1:004 & E
Outpatient surgical clinics; 907 KAR 1:008 & E
Skilled nursing, intermediate care; 907 KAR 1:036 & E

MENTAL HEALTH, MENTAL RETARDATION SERVICES
(See Health Services)

MILK, MILK PRODUCTS
(See Health Services)

MOTOR CARRIERS
(See Vehicle Regulation)

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION
Air quality; 401 KAR Chapter 50
Reclamation (also Surface mining); 405 KAR Chapters 7 through 24
Waste management; 401 KAR Chapters 30 through 47
Water; 401 KAR Chapters 4 through 6

OCCUPATIONAL SAFETY, HEALTH
29 CFR Part 1910; 803 KAR 2:020

OCCUPATIONS, PROFESSIONS
Dentistry; 201 KAR Chapter 8
Landscape architects; 201 KAR Chapter 10

PERSONNEL
(See also Employees, State)
Board
  Appeal procedures; 101 KAR 1:360
  Probationary period; 101 KAR 1:320; 101 KAR 1:325 & E

PUBLIC PROTECTION, REGULATION
Housing, Buildings and Construction
  Building code; 815 KAR Chapter 7
  Plumbing; 815 KAR Chapter 20
  Standards of safety; 815 KAR Chapter 10
Insurance
  Authorization of insurers; 806 KAR Chapter 3
  Fees and taxes; 806 KAR Chapter 4
  Rates, rating organizations; 806 KAR Chapter 13

RECLAMATION, ENFORCEMENT
Bonds, Insurance
  Bond amount, duration; 405 KAR 10:020
  Bond forfeiture; 405 KAR 10:050
  Bond procedures, criteria, schedule; 405 KAR 10:040
  General requirements; 405 KAR 10:010
  Insurance type, terms, conditions; 405 KAR 10:030

RECLAMATION, ENFORCEMENT (cont'd)
Permits
  Coal exploration; 405 KAR 8:020
  General provisions; 405 KAR 8:010
  Special categories; 405 KAR 8:050
Provisions, General
  Applicability; 405 KAR 7:030
  Definitions, abbreviations; 405 KAR 7:020
  Hearings; 405 KAR 7:090
  Reference materials; 405 KAR 7:015
Special Standards
  Coal exploration; 405 KAR 20:010
  Steep slopes; 405 KAR 20:060
Surface Mining Standards
  Backfilling, grading; 405 KAR 16:190
  Diversions; 405 KAR 16:080
  Explosives; 405 KAR 16:120
  General provisions; 405 KAR 16:010
  Impoundments; 405 KAR 16:100
  Noncoal mine waste; 405 KAR 16:150
  Surface, groundwater monitoring; 405 KAR 16:110
  Water quality; 405 KAR 16:070
Underground Mining Standards
  Backfilling, grading; 405 KAR 16:190
  Diversions; 405 KAR 16:080
  Explosives; 405 KAR 16:120
  General provisions; 405 KAR 16:010
  Impoundments; 405 KAR 16:100
  Noncoal mine waste; 405 KAR 16:150
  Surface, groundwater monitoring; 405 KAR 16:110
  Water quality; 405 KAR 16:070
Unsuitable Areas
  Areas unsuitable; 405 KAR 24:040
  Petition requirements; 405 KAR 24:020
  Process, criteria for designating; 405 KAR 24:030

RETIREMENT
KERS
  Contributions, interest rates; 105 KAR 1:010

REVENUE
(See also Taxation)
Excise Tax, Selective
  Motor fuels; 103 KAR Chapter 43
Income Tax
  Corporations; 103 KAR Chapter 16

SOCIAL INSURANCE
Public Assistance
  AFDC standards; 904 KAR 2:016 & E
  Child support; 904 KAR 2:020
  LIHEAP; 904 KAR 2:116 & E
  Reference materials; 904 KAR 2:170
  Repealer; 904 KAR 2:202
  Supplementary policies; 904 KAR 2:140

SOCIAL SERVICES
Children's Residential Services
  Youth education; 905 KAR 7:230

SUBSTANCE ABUSE
(See Health Services)

SURFACE MINING
(See Reclamation)

TAXATION
Excise, Selective; Motor Fuels
  Special fuels, railroads; 103 KAR 43:250
  Special fuels, ships & vessels; 103 KAR 43:260
Income Tax; Corporations
  Barge lines; 103 KAR 16:145
  Pipeline; 103 KAR 16:110
  Railroads; 103 KAR 16:130
  Telephone, telegraph; 103 KAR 16:100

TRANSPORTATION
Administration
  Repealer; 600 KAR 1:080
Highways
  Maintenance; 603 KAR Chapter 3
  Traffic; 603 KAR Chapter 5
Minority Affairs
  Certification of minority enterprises; 600 KAR 4:010 & E
Toll Facilities
  Emergency, processions; 600 KAR 2:020 & E
Vehicle Regulation
  Driver improvement; 601 KAR Chapter 13
  Motor carriers; 601 KAR Chapter 1
  Motor vehicle tax; 601 KAR Chapter 9
  Motorcycle safety; 601 KAR Chapter 14

UNEMPLOYMENT INSURANCE
(See Employment Services)

VEHICLE REGULATION
Driver Improvement
  Point system; 601 KAR 13:020 & E
Motor Carriers
  Hazardous material; 601 KAR 1:025
  Safety regulations; 601 KAR 1:005 & E
Motor Vehicle Tax
  Temporary tags; 601 KAR 9:140
  Vehicle inspection; 601 KAR 9:090
Motorcycle Safety
  Headgear, eye devices; 601 KAR 14:010

VITAL STATISTICS
(See Health Services)

VOCATIONAL EDUCATION
Instructional Programs
  General standards; 705 KAR 4:010
State-Operated Schools
  Student insurance; 705 KAR 5:140 & E

WASTE MANAGEMENT
Facilities; Interim Status Standards
  Closure financial requirements; 401 KAR 35:090 & E
  Closure, postclosure; 401 KAR 35:070 & E
Facilities; Owners, Operators
  Closure financial requirements; 401 KAR 34:090 & E
Hazardous Waste Fees
  Delisting, exemption; 401 KAR 39:020
  Generator registration; 401 KAR 39:010
  Marketer, burner registration; 401 KAR 39:110
  Modification; 401 KAR 39:070
  Part A; 401 KAR 39:120
  Part B; 401 KAR 39:030
  Postclosure; 401 KAR 39:090
  Recycling; 401 KAR 39:080
  Short term; 401 KAR 39:060
General Administrative Procedures
  Definitions; 401 KAR 30:010 & E
Generators of Hazardous Waste
  General provisions; 401 KAR 32:010
  Recordkeeping, reporting; 401 KAR 32:040 & E
Identification, Listing of Hazardous Waste
  General provisions; 401 KAR 31:010
  Identifying criteria; 401 KAR 31:020 & E
Solid Waste Facilities;
  Permit fees; 401 KAR 47:060

WATER
Quality
  KPDES discharge permit, fees; 401 KAR 5:085
  Operator certification; 401 KAR 5:010
  Permits to discharge; 401 KAR 5:005

WATER (cont'd)
Resources
  Definitions; 401 KAR 4:110
  Wild rivers administration & management; 401 KAR 4:120
  Wild rivers boundaries; 401 KAR 4:100
  Wild rivers change of use permit procedures; 401 KAR 4:130
  Wild rivers change of use permit standards; 401 KAR 4:140
Sanitary Engineering
  Distribution, treatment; 401 KAR 6:040
  Public, semipublic; 401 KAR 6:015
  Water well drillers; 401 KAR 6:300

WORKERS' COMPENSATION
Procedures; 803 KAR 25:011
Rehabilitation procedures; 803 KAR 25:080 & E