Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 15, NUMBER 3
SATURDAY, OCTOBER 1, 1988

IN THIS ISSUE

Administrative Regulation Review Subcommittee, Oct. Agenda.....907
Regulation Review Procedure.....910

Emergency Regulations Now In Effect:
Disaster and Emergency Services.....911
Fish and Wildlife.....913
Corrections.....915
Human Resources.....926

As Amended:
Personnel Board.....950
Board of Landscape Architects.....950
Corrections.....951
Transportation.....963
Housing, Buildings and Contruction.....966
Human Resources.....987

Amended After Hearing:
Natural Resources and Environmental Protection.....991
Transportation.....1092
Education.....1092
Worker's Compensation.....1108
Insurance.....1113
Human Resources.....1115

Proposed Amendments Received through September 15:
Agriculture Experiment Station.....1113
Finance.....1126
Board of Physical Therapy.....1128
Fish and Wildlife.....1130
Corrections.....1145
Transportation.....1152
Education.....1153
State Racing Commission.....1154
Human Resources.....1156

Proposed Regulations Received Through September 15:
Disaster and Emergency Service.....1182
Fish and Wildlife.....1184
Corrections.....1186
Education.....1194

Sep. Minutes of the Administrative Regulation Review Subcommittee.....1197
Other Committee Reports.....1202

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates.....D2
KRS Index.....D8
Subject Index.....D14

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

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is tentatively scheduled on October 3-4, 1988. See tentative agenda on pages 907-909 of this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA
October 3, 1988
(Rm. 107, Capitol Annex @ 2 p.m.)

FINANCE AND ADMINISTRATION CABINET
Higher Education Assistance Authority

Kentucky Loan Program
11 KAR 3:060. Loan Insurance Program. (Repeals 11 KAR 3:020; 11 KAR 3:030; 11 KAR 3:040; and 11 KAR 3:050)

KHEAA Grant Programs
11 KAR 5:110. Dual Enrollment Under Consortium Agreement.

DEPARTMENT OF PERSONNEL

Classified
101 KAR 2:030. Compensation plan.
101 KAR 2:090. Service regulations.
101 KAR 2:100. Leave regulations.
101 KAR 2:110. Employee evaluation plan.
101 KAR 2:120. Incentive programs.
101 KAR 2:140. Workers compensation fund and program.
101 KAR 2:150. State safety program.
101 KAR 2:160. Kentucky employee assistance program.

Unclassified
101 KAR 3:010. Leave regulations for unclassified service.

REVENUE CABINET
Department of Professional and Support Services

Selective Excise Tax; Motor Fuels
103 KAR 43:270. Export of special fuels used in commercial ships and vessels.

GENERAL GOVERNMENT CABINET

Board of Pharmacy
201 KAR 2:130. Schedule I and II controlled substances.

Board of Medical Licensure
201 KAR 9:175 & E. Physician assistants; certification and supervision. (Repeals 201 KAR 9:083)

Board of Nursing
201 KAR 20:161. Investigation and disposition of complaints.

TOURISM CABINET
Department of Fish and Wildlife Resources

Game
301 KAR 2:044 & E. Taking of migratory wildlife.
301 KAR 2:240 & E. Special bobcat harvest season.

Wildlife
301 KAR 4:070. Scientific, educational and commercial nuisance wildlife control collecting permits.
301 KAR 4:080. Taxidermy requirements.

COMMERCE CABINET
Department of Agriculture

Fairs and Shows
302 KAR 15:030. Beef cattle shows and sales.

Amusement Rides
302 KAR 16:010. Procedure for obtaining a permit for operating amusement rides or attractions.

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

Water Resources
401 KAR 4:100. Wild rivers boundaries. (Amended After Hearing)
401 KAR 4:110. Definitions for 401 KAR 4:120 to 4:140. (Amended After Hearing)
401 KAR 4:120. Wild rivers administration and management. (Amended After Hearing)
401 KAR 4:130. Wild rivers change of use permit procedures. (Amended After Hearing)
401 KAR 4:140. Wild rivers change of use permit standards. (Amended After Hearing)

Water Quality
401 KAR 5:005. Permits to discharge sewage; industrial and other wastes; definitions. (Amended After Hearing)
401 KAR 5:010. Certification of wastewater system operators. (Amended After Hearing)
401 KAR 5:085. KPDES discharge permit and variance fees. (Amended After Hearing)

Sanitary Engineering
401 KAR 6:015. Public and semipublic water supplies. (Amended After Hearing)
401 KAR 6:040. Water treatment plants; water distribution systems; certification of operators. (Amended After Hearing)
401 KAR 6:300. Water well drillers certification; examination; fees. (Amended After Hearing)

Division of Waste Management

General Administrative Procedures
401 KAR 30:010 & E. Definitions. (Not Amended After Hearing)

Identification and Listing of Hazardous Waste
401 KAR 31:010. General provisions for hazardous wastes. (Not Amended After Hearing)
401 KAR 31:020 & E. Criteria for identifying the characteristics of hazardous waste and criteria for listing. (Not Amended After Hearing)

Standards Applicable to Generators of Hazardous Waste
401 KAR 32:010. General provisions for generators. (Not Amended After Hearing)
401 KAR 32:040 & E. Recordkeeping and reporting. (Not Amended After Hearing)
Standards for Owners and Operators of Hazardous Waste Storage, Treatment and Disposal Facilities
401 KAR 34:090 & E. Closure financial requirements. (Not Amended After Hearing)
Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities
401 KAR 35:070 & E. Closure and postclosure (IS). (Not Amended After Hearing)
401 KAR 35:090 & E. Closure financial requirements (IS). (Not Amended After Hearing)
Hazardous Waste Fees
401 KAR 39:010. Generator registration fees. (Not Amended After Hearing)
401 KAR 39:020. Delisting and exemption fees. (Amended After Hearing)
401 KAR 39:030. Part B treatment, storage, or disposal facility fees. (Repeals 401 KAR 39:040 and 401 KAR 39:050) (Amended After Hearing)
401 KAR 39:060. Short term fees. (Amended After Hearing)
401 KAR 39:070. Modification fees. (Amended After Hearing)
401 KAR 39:080. Recycling fees. (Not Amended After Hearing)
401 KAR 39:090. Post closure fees. (Amended After Hearing)
401 KAR 39:110. Marketer and burner registration fees. (Not Amended After Hearing)
401 KAR 39:120. Part A application fee. (Amended After Hearing)
Solid Waste Facilities
401 KAR 47:060. Permit fees. (Amended After Hearing)

Division for Air Quality

General Administrative Procedures
401 KAR 50:015. Documents incorporated by reference. (Not Amended After Hearing)
401 KAR 50:036. Permit and exemption fees. (Amended After Hearing)

Department for Surface Mining Reclamation and Enforcement

General Provisions
405 KAR 7:015. Documents incorporated by reference. (Not Amended After Hearing)
405 KAR 7:020. Definitions and abbreviations. (Amended After Hearing)
405 KAR 7:030. Applicability. (Not Amended After Hearing)
405 KAR 7:090. Hearings. (Amended After Hearing)
Permits
405 KAR 8:010. General provisions for permits. (Amended After Hearing)
405 KAR 8:020. Coal exploration. (Not Amended After Hearing)
405 KAR 8:050. Permits for special categories of mining. (Not Amended After Hearing)
Bond and Insurance Requirements
405 KAR 10:010. General requirements for performance bond and liability. (Not Amended After Hearing)
405 KAR 10:020. Amount and duration of performance bond. (Not Amended After Hearing)
405 KAR 10:030. Types, terms and conditions of performance bonds and liability insurance. (Amended After Hearing)
405 KAR 10:040. Procedures, criteria and schedule for release of performance bond. (Not Amended After Hearing)
405 KAR 10:050. Bond forfeiture. (Amended After Hearing)
Performance Standards for Surface Mining Activities
405 KAR 16:010. General provisions. (Not Amended After Hearing)
405 KAR 16:070. Water quality standards and effluent limitations. (Not Amended After Hearing)
405 KAR 16:080. Diversions. (Amended After Hearing)
405 KAR 16:100. Permanent and temporary impoundments. (Amended After Hearing)
405 KAR 16:110. Surface and groundwater monitoring. (Amended After Hearing)
405 KAR 16:120. Use of explosives. (Not Amended After Hearing)
405 KAR 16:150. Disposal of noncoal mine waste. (Not Amended After Hearing)
405 KAR 16:190. Backfilling and grading. (Amended After Hearing)
Performance Standards for Underground Mining Activities
405 KAR 18:010. General provisions. (Not Amended After Hearing)
405 KAR 18:070. Water quality standards and effluent limitations. (Not Amended After Hearing)
405 KAR 18:080. Diversions. (Amended After Hearing)
405 KAR 18:100. Permanent and temporary impoundments. (Amended After Hearing)
405 KAR 18:110. Surface and groundwater monitoring. (Amended After Hearing)
405 KAR 18:120. Use of explosives. (Not Amended After Hearing)
405 KAR 18:150. Disposal of noncoal mine waste. (Not Amended After Hearing)
405 KAR 18:190. Backfilling and grading. (Amended After Hearing)
Special Performance Standards
405 KAR 20:010. Coal exploration. (Not Amended After Hearing)
405 KAR 20:060. Steep slopes. (Not Amended After Hearing)
Areas Unsuitable for Mining
405 KAR 24:020. Petition requirements. (Not Amended After Hearing)
405 KAR 24:030. Process and criteria for designating lands unsuitable for surface mining operations. (Not Amended After Hearing)
405 KAR 24:040. Areas unsuitable for mining. (Not Amended After Hearing)

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA
October 4, 1988
(Rm. 107, Capitol Annex @ 10 a.m.)

CORRECTIONS CABINET

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

TRANSPORTATION CABINET
Department of Highways

Traffic

603 KAR 5:115. Coal haul highway system; reporting requirements. (Amended After Hearing)

Transportation Scholarship Program

603 KAR 8:010. Transportation scholarship program.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services

School Terms, Attendance and Operation

702 KAR 7:090. Requirements for coaches and other personnel staffing interscholastic athletic programs. (Deferred from the March meeting)

Office of Instruction

Teacher Education

704 KAR 15:080. Paraprofessional employees and volunteer personnel. (Deferred from the March meeting)

Teacher Certification

704 KAR 20:240. Speech and communication disorders; teacher's provisional certificate. (Amended After Hearing)

704 KAR 20:460. Examination prerequisites for principal certification. (Amended After Hearing)

Office of Education for Exceptional Children

Exceptional and Handicapped Programs

707 KAR 1:051. Exceptional children's programs. (Amended After Hearing)

707 KAR 1:110 & E. Kentucky School for the Blind; admission policies. (Amended After Hearing)

LABOR CABINET
Department of Workers' Claims

Workers' Compensation Board

803 KAR 25:025 & E. Joint self-insurers.

803 KAR 25:080 & E. Workers' compensation rehabilitation procedures. (Amended After Hearing)

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Authorization of Insurers and General Requirements

806 KAR 3:130. Liability insurance closed claims reporting. (Amended After Hearing)

806 KAR 3:140. Liability and health insurance statistical reports. (Amended After Hearing)

Fees and Taxes

806 KAR 4:010 & E. Fees of the Department of Insurance. (Amended After Hearing)

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

Utilities

807 KAR 5:069. Water district and water association construction cases.

Harness Racing Commission

Harness Racing Rules

811 KAR 1:035. Claiming races.

811 KAR 1:055. Declaration to start; drawing horses.

811 KAR 1:180. Personnel to be licensed; fees.

CABINET FOR HUMAN RESOURCES
Department for Health Services

Communicable Diseases

902 KAR 2:110 & E. Reportable communicable diseases and sexually transmitted diseases which are transmissible through blood. (Amended After Hearing)

902 KAR 2:120 & E. Standardized risk factor history form and blood donor consent form. (Amended After Hearing)

Hospitalization of Mentally Ill and Mentally Retarded

902 KAR 12:020. Patient's rights.

Controlled Substances

902 KAR 55:015. Schedule I substances.

902 KAR 55:025. Schedule III substances.

902 KAR 55:030. Schedule IV substances.

902 KAR 55:035. Schedule V substances.

Department for Social Insurance

Public Assistance

904 KAR 2:016 & E. Standards for need and amount; AFDC.

904 KAR 2:022 & E. Kentucky Administrative process for child support.

Office of Inspector General

Office of Inspector General

906 KAR 1:040 & E. Blood establishment licensure. (Not Amended After Hearing) (Agency Requests Deferral)

REGULATION REVIEW PROCEDURE

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, tiering statement, regulatory impact analysis, fiscal note, and the federal mandate comparison. Those regulations received by the deadline required in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing

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

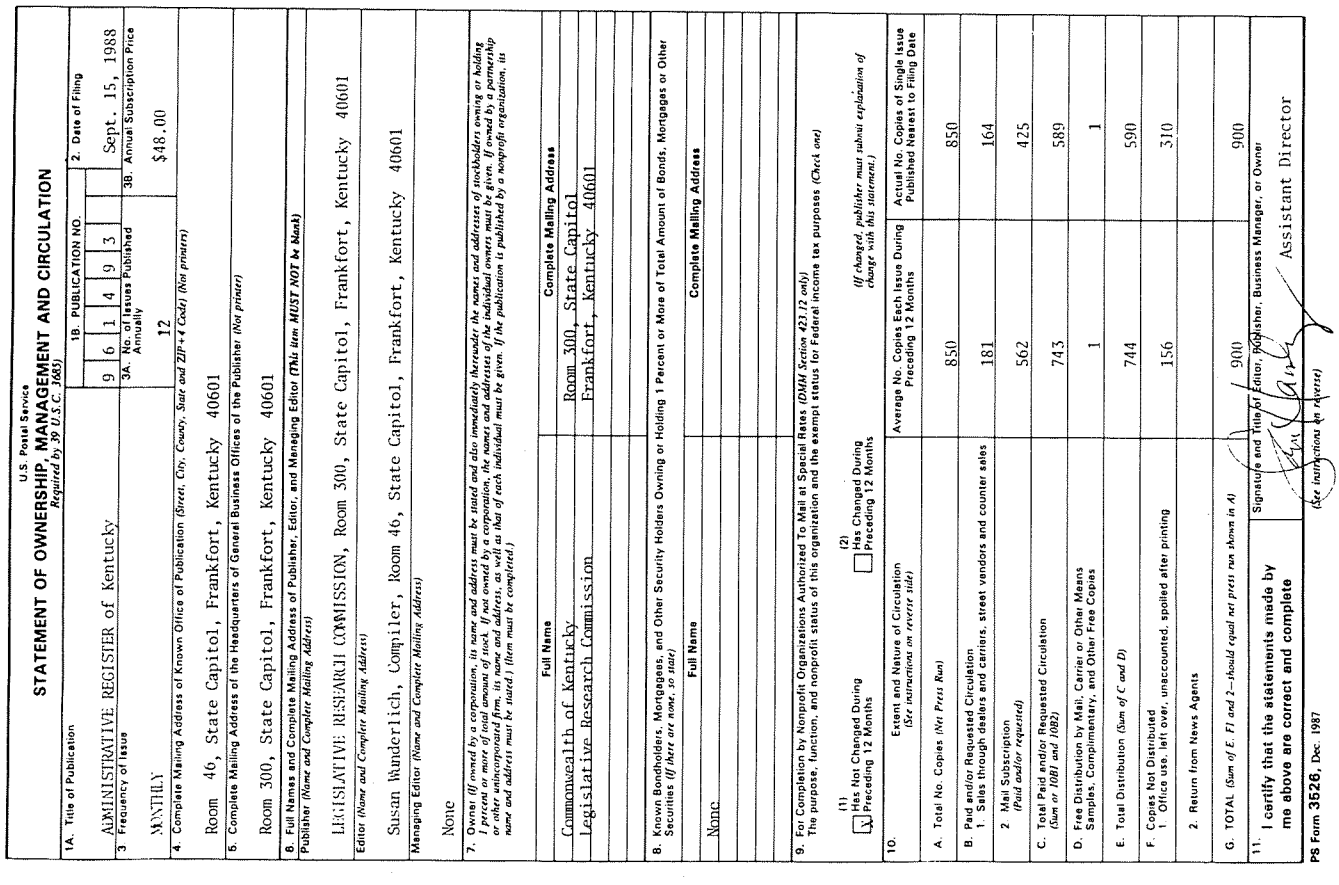
Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

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

Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and following publication shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.



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Signature and Title of Editor, Publisher, Business Manager, or Owner: Assistant Director
(See instructions on reverse)

PS Form 3526, Dec. 1987

EMERGENCY REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
106 KAR 1:060E

This regulation is submitted as an emergency regulation in order to meet deadlines imposed by KRS 39.740, which requires the Division of Disaster and Emergency Services to accept applications for rescue aid during specific months. The first date after enactment of the statute occurs in August 1988. In order to provide potential applicants with information required to meet this deadline, an emergency regulation is required. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 14, 1988.

WALLACE G. WILKINSON, Governor
BG MICHAEL W. DAVIDSON, The Adjutant General

DEPARTMENT OF MILITARY AFFAIRS

106 KAR 1:060E. Rescue squad regulations.

RELATES TO: KRS Chapter 39
STATUTORY AUTHORITY: KRS 39.730
EFFECTIVE: September 14, 1988
NECESSITY AND FUNCTION: KRS 39.730 requires the Division of Disaster and Emergency Services to develop regulations identifying minimum equipment to be obtained by rescue squads which participate in the rescue aid program. Further, KRS 39.700-39.770 provides information about eligibility, rescue operations and funding procedures and additional information is required to assist squads and to ensure uniformity and fairness in the administration of the program.

Section 1. KRS 39.730 sets forth eligibility requirements for rescue squads applying for grants. All requirements shall apply to applicants for the first grant and subsequent grants under this statute except that squads shall not be required to meet the 168 man-hour training requirement until July 1, 1989.

Section 2. KRS 39.730 requires rescue squads to be formally affiliated with the local disaster and emergency services organization. In those cases where the local disaster and emergency services organization does not meet minimum requirements established for participation in the state supplementary fund program, whether the organization actually receives funds or not, it shall be determined that the local organization is inactive and that affiliation is impossible.

Section 3. KRS 39.720 requires each local disaster and emergency services director to submit requests for funding initiated by the chief officer of each rescue squad. In counties with more than one (1) squad applying for funds, the director shall, after consulting with squad representatives and the county judge/executive, submit with the application a memorandum or letter enumerating comprehensive priorities for the jurisdiction.

Section 4. Each rescue squad which applies for rescue aid funds shall use DES Form 107, which shall be provided by the state Division of Disaster and Emergency Services. All sections of the form shall be properly completed before the advisory committee established under KRS 39.720 may consider the application. The committee may require additional information when such information may aid in the review process.

Section 5. The executive director of disaster and emergency services shall approve grants for equipment specified as basic minimum equipment for each qualifying squad before approving funds for any other equipment unless, in his judgment, justification for such optional equipment is so extraordinary that it merits an exemption from the requirement. All such exemptions shall be made in writing.

Section 6. The executive director of disaster and emergency services may recognize squads which provide one (1) or more "specialized" rescue services. He may do so only after determining that there is a need for such services and that the need is not being met by existing resources. Any local disaster and emergency services director, rescue squad member, or individual interested in establishing a specialized squad may propose that a service be recognized and may subsequently negotiate a basic minimum equipment list for that specialty.

Section 7. The basic minimum equipment list for general purpose rescue squads shall be:

12 pair gloves
12 pair goggles
12 fire or squad coats
2 self-contained breathing apparatus (OSHA approved)
2 first aid kits
2 full backboards
2 half backboards
1 stokes basket
2 1/2" x 12" gooseneck wrecking bar
2 1" x 30" gooseneck wrecking bar
1 6' pry bar
1 12' tow chain
2 hacksaw frames
12 hacksaw blades
1 10-ton porta-power
1 8' straight ladder
2 pair pliers
2 pair wire cutters with insulated grips
1 18" bow saw
1 set of common screwdrivers
1 set of Phillips screwdrivers
1 pair tin snips
1 round point shovel, short handle
2 fire retardant blankets or salvage covers
2 150' sections of rope
2 4" tackle blocks
12 helmets
12 pair boots with protective toe
1 oxygen bottle with regulator

1 resuscitator
1 splint kit
1 set of webbing for casualty handling
1 combination pick and flat head axe
2 crash axe
2 crescent wrenches
2 pipe wrenches
1 14" chain saw
1 claw hammer
1 8 lb. sledge hammer
1 5-ton hydraulic jack
1 1.5-ton "come along"
1 air chisel with extra tank
2 hay bale hooks
1 seat belt cutter
1 center punch
1 pair vice grips
1 round point shovel, long handle
1 mattock
4 50' sections of rope
1 5 gal. gas can, safety type
2 10 lb. fire extinguishers, ABC rated
1 2.5 KVA portable generator
1 100' No. 10 electrical extension cord
2 100' No. 12 electrical extension cord
4 portable radios
* mobile radios (1 per vehicle)
1 50' No. 10 electrical extension cord
2 portable flood lights
12 pagers
1 pager encoder
1 radio base station

Section 8. Squads specializing in water rescue and recovery shall have the following equipment before becoming eligible for grants:

1 vehicle dedicated to water rescue and recovery
1 16' john boat (equivalent or larger)
2 oars
1 trailer
1 boat motor (15 HP minimum)

Section 9. The basic minimum equipment for squads specializing in water rescue and recovery shall be:

4 type III personal flotation devices (USCG approved)
1 boat motor (25 HP)
2 pike poles
1 shepherd's hook
1 20' john boat
2 lanterns with rechargeable batteries
2 rescue pulleys (Anderson or equivalent)
1 body bag
2 pair of waders
1 stokes basket stretcher or equivalent
1 pair vice grips
1 Phillips head screwdriver
1 hatchet
1 pair bolt cutters
2 signal lights
4 buoy markers
2 gas tanks
2 grappling irons
1 grapnel
1 boat anchor
1 chart graph with print-out capability
2 spot lights
2 250' line bags
2 250' sections of drag line
4 pair rubberized gloves
1 full-length backboard
1 first aid kit
1 tool box
1 flat blade screwdriver
1 pair channel locks
1 bow saw
2 flashlights

Section 10. Squads specializing in high angle or cave rescue shall have the minimum following equipment before becoming eligible for grant funds:

1 vehicle dedicated to high angle or cave rescue
1 stokes basket stretcher or equivalent
1 200' of 7/16" static kermantle rope
4 large "D" locking carabiners
1 figure eight descender
4 6' x 1" nylon webbing

Section 11. The basic minimum equipment for squads specializing in high angle or cave rescue shall be:

10 large "D" locking carabiners
10 large "D" offset locking carabiners
4 Gibbs ascenders, or equivalent
6 200' 1/2" hauling rope
12 6' x 1/2" nylon webbing
4 2" rescue pulleys
4 pair rappelling gloves
1 KED stretcher or equivalent
2 RSI or equivalent rescue rack
1 fracture pack with assorted splints
4 figure eight descenders
4 rope bags
4 rappelling helmets
6 200' 7/16" static kermantle rope
4 rappelling Swiss seats or full-body harnesses
4 helmet head lamps
12 light sticks, Cyalume or equivalent
2 belt pack first aid kits
4 flashlights, with rechargeable batteries

Section 12. Unless specifically exempted, in writing, by the executive director, all equipment purchased in whole or in part with rescue aid funds shall be stored on a dedicated rescue vehicle or in a storage area controlled by the squad.

MICHAEL W. DAVIDSON, Brig. Gen.
APPROVED BY AGENCY: September 12, 1988
FILED WITH LRC: September 14, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
301 KAR 2:044E

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

WALLACE G. WILKINSON, Governor
DON R. McCORMICK, Commissioner

TOURISM CABINET
Department of Fish & Wildlife Resources

301 KAR 2:044E. Taking of migratory wildlife.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.300, 150.305, 150.320, 150.330, 150.340, 150.360, 150.603
STATUTORY AUTHORITY: KRS 13A.350, 150.025
EFFECTIVE: August 16, 1988
NECESSITY AND FUNCTION: In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates where appropriate.

Section 1. Seasons. (1) Doves: September 1 through September 30 [October 31]; October 8 [November 28] through October 31; December 1 through December 6.
(2) Woodcock: October 1 through December 4.
(3) Common snipe: October 1 through December 4.
(4) Experimental September duck: September 7 [9] through September 11 [13].

Section 2. Limits.

Species	Bag Limits	Possession Limits
Doves	15 [12]	30 [24]
Woodcock	5	10
Common snipe	8	16
Experimental September wood duck, wood duck[, teal and other ducks]	*2 [4]	*4 [8]

*Daily bag limit shall be two (2) wood [is four (4)] ducks[, no more than two (2) of which may be wood ducks, and no more than one (1) of which may be a species other than teal or wood duck]. The possession limit is double the daily bag limit.

Section 3. Bag and Possession Limits. (1) After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.
(2) The above species (except doves) dressed in the field, or being prepared for transportation, shall [must] have one (1) fully feathered wing or head attached to the bird for identification purposes.

Section 4. Shooting Hours. (1) Doves: from 11 a.m. until sunset during the period September 1 through September 30; and October 8 through October 31; from sunrise to sunset during the period December 1 [November 28] through December 6.
(2) Common snipe and woodcock: from one-half (1/2) hour before sunrise to sunset.
(3) Experimental September duck: from one-half (1/2) hour before sunrise to sunset.

Section 5. Falconry Hunting. The wildlife species listed in this regulation may be pursued and taken by a licensed falconer with any legal hunting raptor during the regular hunting dates listed for each species. All bag and possession limits apply to falconry hunting.

Section 6. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:
(1) Ballard Wildlife Management Area, located in Ballard County.
(a) Doves: September 1 through September 30; and October 8 through October 14 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.
(b) Woodcock and snipe: seasons closed.
(2) West Kentucky Wildlife Management Area, located in McCracken County.
(a) Doves: September 1 through September 30; and October 8 through October 14 [16] only.
(b) Woodcock and snipe: hunting permitted on tracts 2, 3, 6, and 7 only.
(c) All tracts designated by numbers followed by the letter "A" are closed to hunting.
(3) Central Kentucky Wildlife Management Area, located in Madison County.
(a) Doves: September 1 through September 30; and October 8 through October 14 [16] only.
(b) Woodcock and snipe: seasons closed.
(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.
(a) Doves: September 1 through September 30 and December 1 through December 6 only.
(b) Woodcock and snipe: December 1 through December 4 only.
(5) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties.
(a) Doves: September 1 [3] through October 12 [September 25], September 26 through October 12 [31] as announced by Fort Campbell Hunting and Fishing Unit, and November 24 [28] through December 11 [6] only. Hunting permitted during these periods in designated areas only.
(b) Woodcock and snipe: November 24 [26] through December 4.
(c) September wood duck: September 7 through 11 only. Hunting permitted during these permits in designated areas only.
(6) Closed Areas. The hunting of doves, woodcock, common snipe, and ducks is prohibited on the following wildlife management areas: that portion of Grayson Lake Wildlife Management Area east of the Little Sandy River and on Bruin Creek portions of Grayson Lake; Beaver Creek Wildlife Management Area, including all private in-holdings, located in Pulaski and McCreary Counties; Robinson Forest Wildlife Management Area, located in Breathitt, Perry, and Knott Counties; Redbird Wildlife Management Area, including all private in-holdings, located in Leslie and Clay Counties; Cane Creek Wildlife Management Area, including all private in-holdings, located in Laurel County; and Mill Creek Wildlife Management Area, located in Jackson County.

Section 7. Waterfowl Stamp Requirements. Those hunting ducks during the experimental September duck season shall [must] possess appropriate state and federal waterfowl stamps as stipulated in KRS 150.330 and 150.603.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
CHARLES E. PALMER, JR., Chairman
APPROVED BY AGENCY: June 13, 1988
FILED WITH LRC: August 16, 1988 at 11 a.m.

STATEMENT OF EMERGENCY
301 KAR 2:240E

This bobcat harvest season regulation, including federal bobcat pelt tagging procedures, is required by the United States Fish and Wildlife Service (USFWS) in order to allow for the export of Kentucky bobcats for sale outside the United States. The USFWS requires an approved regulation prior to their issuance of federal tags to state agencies. This emergency regulation is required to assure receipt of the federal bobcat tags and to allow time for distribution to tag agents in preparation for the 1988-89 bobcat season.

WALLACE G. WILKINSON, Governor
DON R. McCORMICK, Commissioner

TOURISM CABINET
Department of Fish & Wildlife Resources

301 KAR 2:240E. Special bobcat harvest season.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.180, 150.183, 150.300, 150.305, 150.330, 150.340, 150.360, 150.365, 150.370, 150.390, 150.399, 150.400, 150.410, 150.415, 150.416, 150.417
STATUTORY AUTHORITY: KRS Chapter 13A.350, 150.025
EFFECTIVE: August 16, 1988
NECESSITY AND FUNCTION: This regulation is necessary to reinstitute a bobcat harvest season in Kentucky for the continued protection of bobcats while insuring a permanent and continued supply of this wildlife resource for present and future residents of the state. The function of this regulation is to provide for the prudent taking of bobcats within reasonable limits based upon an adequate supply.

Section 1. Bobcat Taking Season, Zone, Methods of Harvest, Limits and Zone Quota, and License Requirements. (1) Bobcat taking season. The day following closure of deer gun season [November 24] through January 31 or until the season quota is attained, whichever comes first.
(2) Harvest zone. That portion of the state east of the line formed by and including Lewis, Rowan, Menifee, Powell, Estill, Jackson, Rockcastle, Pulaski and Wayne counties.
(3) Methods of harvest. Bobcats may be taken by hunting or by calling during daylight hours only, or by trapping. Callers may use only hand or mouth operated calls.
(4) Limits and zone quota.
(a) The limit is two (2) bobcats per person per season.
(b) The bobcat harvest quota is 400. Should it be determined that the quota of 400 bobcats will be filled prior to January 31, the season will close. Notice will be given a minimum of twenty-four (24) hours in advance of the time and date of closing. All participants in the special bobcat season should regularly contact department officials within the harvest zone, or call the wildlife division during business hours (8 a.m. - 4:30 p.m.) at 502/564-4406 to determine the status of the harvest. No bobcats will be tagged later than four (4) days after the announced date of closing or no later than forty-eight (48) hours following the January 31 season ending date, whichever comes first.
(5) License requirements. Bobcat hunters or trappers must have in their possession valid Kentucky licenses for the respective method of harvest, except as exempted by KRS 150.170.

Section 2. Requirements for Possession, Tagging of Bobcats, Untagged Pelts, Tagging Agents and Possession of Bobcat Tags. (1) No person shall [may] possess an untagged bobcat outside the legal bobcat harvest zone. It is illegal to hold a live bobcat in Kentucky except those held for exhibition by public agencies or for temporary exhibition by individuals as permitted by the commissioner.
(2) Anyone harvesting a bobcat must take it to a tagging agent (authorized personnel of the department) for tagging within forty-eight (48) hours of being harvested, except as specified in Section 1(4)(b) of this regulation. Prior to tagging, the taker must validate eligibility according to Section 1(5) of this regulation and provide his/her social security number. At the time a bobcat is tagged, the taker must provide the tagging agent with the entire skinned bobcat carcass suitably enclosed in a plastic bag unless the owner of the bobcat intends to have the animal mounted or otherwise processed. The tagging agent shall [may] refuse to tag any bobcat if the carcass is not suitably enclosed in plastic.
(3) The tagging agent will not tag an illegally taken bobcat. Any untagged bobcat pelt for which there is no carcass or any bobcat taken illegally may be seized.
(4) It is illegal for anyone other than a department employee to possess an unused bobcat tag.

Section 3. Processing Requirements. (1) Taxidermists are required to report monthly the status of bobcats in their possession. Taxidermists receiving tagged bobcat pelts or entire bobcats must leave the tag attached until after the pelt is tanned or until the pelt is to be mounted. All untanned or unmounted bobcat pelts without a tag are subject to seizure.
(2) The lower jaw from bobcat carcasses received by taxidermists or fur processors, and the removed bobcat tag or the tag number must be provided to the department when the bobcat is skinned. Jaw mail-in envelopes will be provided upon request to the wildlife division.
(3) Tags must remain attached to all bobcat pelts until the furs are processed.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
CHARLES E. PALMER, JR., Chairman
APPROVED BY AGENCY: June 13, 1988
FILED WITH LRC: August 16, 1988 at 11 a.m.

STATEMENT OF EMERGENCY
501 KAR 1:030E

In order to ensure that the Kentucky Parole Board regulation is consistent with its practice in determining parole eligibility, it is necessary to implement this emergency

regulation. The previous regulation, formulated over eight years ago, is in need of immediate replacement. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on September 12, 1988 in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor
JOHN C. RUNDA, Ph.D., Chairman

KENTUCKY PAROLE BOARD

501 KAR 1:030E. Determining parole eligibility.

RELATES TO: KRS 439.340
STATUTORY AUTHORITY: KRS 439.340(3)
EFFECTIVE: September 14, 1988
NECESSITY AND FUNCTION: KRS 439.340 requires the Kentucky Parole Board to adopt regulations with respect to eligibility of prisoners for parole. This regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. As used in these regulations, unless the content otherwise requires:
(1) "Board" is the Kentucky Parole Board or a quorum thereof.
(2) "Quorum" is the number of members of any body who must necessarily be present in order for the body to transact business.
(3) "Panel" is anything less than a quorum.
(4) "Chairman" is the chief administrative officer of the board as described in KRS 439.320(2), appointed by the Governor to direct the operations of the board and to fulfill the functions established by law for such position.
(5) "Detainer" is a document issued or made by a legal authority, authorizing the keeper of a prison/jail to keep in his custody the person named in the document.
(6) "Serve-out" is a decision of the board that an inmate must serve until the completion of his sentence (SOT - serve-out time).
(7) "Deferment" is a decision of the board that an inmate must serve a specific number of months before further parole consideration.
(8) "Reconsideration" is a decision to review a previous board action.
(9) "Parole recommendation" is a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence if the inmate has an approved parole plan and if the inmate has signed his parole certificate.
(10) "Parole" is the release of an inmate with a signed parole certificate to the community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision. Where a court or other authority has issued a detainer against the inmate, the board, in its discretion, may release him to answer the detainer of such court or authority.
(11) "Parole rescission" is a decision of the board to terminate or rescind an inmate's parole recommendation, before such inmate is actually released on parole.
(12) "Parole revocation" is the formal procedure by which the board may terminate or revoke a parolee's release on parole.
(13) "Preliminary hearing" is the initial hearing conducted by an administrative law judge to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.
(14) "Youthful offender" is a juvenile declared as such as described in KRS 640.010.

Section 2. Statement of Content. (1) It is the intent of the Kentucky General Assembly in creating the Kentucky Parole Board that it be autonomous and in all respects functionally and administratively separate from any other state agency, except as provided in KRS 439.320(1). Consequently, the board will protect such necessary freedom from real or apparent political control, manipulation, or undue or improper influence by any person, group, or other entity of any kind.
(2) All decisions of the board regarding policy, procedures and its actions in parole matters shall be determined by simple majority vote of the members of the board, except as provided in KRS 439.320(2). Panels of the board may make recommendations to the full board where authorized.

Section 3. Administration. (1) Board structure. The composition of the board shall be as provided by law. The appointment of members of the board, the selection of its chairman, and the quorum requirements shall be those as specified by law.
(2) Information concerning the board.
(a) The board shall provide and disseminate written information concerning the functions of the Kentucky Parole Board.
(b) The board shall maintain close communication and cooperation with the Corrections Cabinet, the Governor and his staff, members and committees of the General Assembly, and other public officials, including judges, state attorney general, Commonwealth Attorney, law enforcement officials and public defenders. The board will communicate and cooperate with all public and private service agencies, including, but not limited to, agencies dealing with mental health, vocational rehabilitation, legal aid and human services.
(c) Since the board has the authority to grant parole, it welcomes the opinion of the sentencing judge, prosecuting attorney, other public officials, and private citizens concerning parole consideration.

Section 4. Parole Eligibility. (1) Initial parole review date.
(a) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed after the effective date of this regulation shall have their cases reviewed by the board (unless otherwise prohibited by statute) in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including Life	8 years

Persistent Felony Offender I	10 years

For the crimes, committed on or after July 15, 1986, of murder, manslaughter I, rape I, sodomy I, assault I, kidnapping (where there is serious physical injury or death), arson I (where there is serious physical injury or death), criminal attempt, criminal solicitation, or criminal conspiracy to commit any of the previously listed capital offenses or Class A felonies which involve serious physical injury or death of the victim:

Sentences of a Number of Years	As prescribed by statute
Sentences of Life	As prescribed by statute

(b) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed on or after December 3, 1980 but prior to the effective date of this regulation shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including Life	8 years

(c) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed prior to December 3, 1980 shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including Life	6 years

Parole eligibility on those individuals serving multiple sentences, one (1) or more of the crimes which resulted in the convictions committed under Section 4(b) or (c) of this regulation and one (1) or more committed under Section 4(a) of this regulation, will be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(d) After the initial review for parole, subsequent review, so long as confinement continues, shall be at the discretion of the board; except maximum deferment given at any one time shall not exceed the minimum parole eligibility for a life sentence as established by statute. The board reserves the right to order a serve-out on any sentence.

(e) A sentence on conviction of a felony imposed upon a confined prisoner for a crime committed prior to the date of his instant commitment, if designated to be served consecutively, shall be added to the sentence(s) being served to determine eligibility for parole consideration if the inmate has not been discharged from the institution since his original admission on that institutional number. If the confined prisoner is a returned parole violator with an additional consecutive sentence then parole eligibility will be determined on the length of the new sentence only, calculated from the date of final sentencing. If the confined prisoner has been recommended for parole or given a serve-out or deferment and receives an additional sentence, running either concurrently or consecutively, parole eligibility on the new sentence will be calculated from the date of original admission on the aggregate sentences (total time to serve) and allowing jail credit on all sentences, as if he had never been seen by the board. If the additional sentence is designated to be served concurrently, he shall be considered as having started to accrue parole eligibility on the day he was committed on the first sentence.

(f) A person receiving a concurrent or consecutive sentence(s) for crime(s) committed while confined in the institution or while on escape from the institution shall not begin accruing eligibility time towards parole consideration on the latter sentence(s) until he has become eligible for parole on the sentence(s), including a life sentence, for which he was originally confined.

(g) In determining parole eligibility for an inmate who has received a sentence for an escape, the board will require, in addition to the amount of time to be served for parole eligibility on the original sentence(s), and the time required to be served for any crime(s) committed while in the institution or while on escape, the service of additional time equal to the time to be served for any additional sentence(s) received for such escape.

(h) If a confined prisoner receives a deferment, escapes before he meets the board next time, returns to the institution from escape but does not have a new sentence for escape, the time out on escape will be added to the deferred date to arrive at his new adjusted deferment date. However, if he later receives an escape sentence for that escape, his time will

be calculated on the new sentence from the date of sentencing. A new escape sentence will wipe out the deferment.

(i) Even though an inmate has received a serve-out or deferment on his original sentence(s) prior to receiving an escape sentence or a sentence or sentences for crimes committed while on escape or while confined in the institution, he will automatically be brought before the board again when, and not until, he becomes eligible for parole consideration on the additional sentence(s) and the parole eligibility will be calculated from the date of sentencing on the new sentence or sentences.

(j) If an inmate has received a parole recommendation but escapes prior to being released on parole, the parole recommendation will be rescinded by the board upon receipt of an affidavit signed and submitted by the institutional parole officer of the institution from where the inmate escaped attesting to the fact that the escape has occurred. Upon return to a state institution, the inmate will be placed back before the board at its next regularly scheduled hearing at the institution where he is confined.

(k) A person who is shock probated and later returned as a shock probation violator shall be considered for parole after he has served the required time on the sentence calculated by adding on the period of time the inmate was out of the institution to his original parole eligibility date.

(l) Persons returned to the institution as a shock probation violator with a new concurrent sentence shall have separate dates of parole eligibility on each sentence computed and the inmate will be heard separately on each eligibility date. The adjusted parole eligibility date on the sentence on which he was shock probated shall be determined by adding the period of time he was out of the institution to his original parole eligibility date calculated prior to being shock probated.

(m) A person who is shock probated and later returned to the institution with a new sentence acquired while on shock probation and ordered to be served consecutively shall be eligible for a parole hearing when he has served the amount of time required to be eligible for a parole hearing required on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences.

(2) In keeping with the intent of the Act, the Parole Board may with the consent of the majority of the board review the case of any inmate for parole consideration prior to his eligibility date if he qualifies for the intensive supervision program under the criteria established in conjunction with the Corrections Cabinet, or medical problems exist, as documented by the Corrections Cabinet medical doctors, or upon written request of the sentencing judge or prosecuting attorney of record. This will not be done until the reason for such action is submitted to all members in writing, along with all supporting documents, and all members will note in writing as to their desire to grant a hearing. This will then be filed in the record of the inmate in question and made a permanent part of his file in the central office of the Corrections Cabinet.

(3) The parole hearing will consist of an interview with the inmate by the board, or a panel. In instances when the inmate is too ill to appear before the board, the board may, at its discretion, appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members. In this instance, as in all cases, a majority vote by a quorum is required before action is taken.

(4) If an inmate refuses to meet the board on his scheduled hearing date, a notarized statement must be presented to this effect. A person refusing to meet the board may petition the board for reconsideration if he changes his mind.

(5) Inmates who are psychologically unstable may be deferred in absentia until they are able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

(6) The board shall schedule the initial parole hearing as follows (unless otherwise prescribed by statute):

(a) For those institutions that have hearings scheduled once per month, the inmates will be seen during the month they are eligible for parole consideration, if administratively possible.

(b) For those institutions that have hearings scheduled bimonthly, the inmates will be seen during the month eligible or one (1) month prior to the month they are eligible for parole consideration, if administratively possible.

(c) In those instances where it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible for a parole hearing, the inmate will be seen at the next available board hearing conducted at the institution where the inmate is housed.

(7) In all cases where parole is recommended, it is conditional upon continued good institutional conduct through the actual release date. If an inmate with a parole recommendation receives an institutional write-up and/or good time loss, the board is to be notified in writing of the institutional infraction so that the board may take further action as needed.

Section 5. Board Criteria for Granting or Denying Parole. (1) Before granting or denying parole, the board shall apply any or all of the following factors to each inmate:

(a) Current offense - seriousness, violence involved, firearm used;

(b) Prior record;

(c) Institutional adjustment and conduct - disciplinary reports, loss of good time, work and program involvement;

(d) Attitude toward authority - before incarceration, during incarceration;

(e) History of alcohol or drug involvement;

(f) History of prior probation, shock probation or parole violations;

(g) Education and job skills;

(h) Employment history;

(i) Emotional stability;

(j) Mental capacities;

(k) Terminal illness;

(l) History of deviant behavior;

(m) Official and community attitudes toward accepting inmate back in the county of conviction;

(n) Victim impact statements and/or victim impact hearings;
(o) Review of parole plan - housing, employment, need for community treatment and follow-up resources;
(p) Any other factors involved that would relate to the inmate's needs and the safety of the public.
(2) During this process, the board may rescind a parole recommendation or reconsider a parole denial.

Section 6. Youthful Offender. (1) Youthful offenders are subject to the jurisdiction of the Kentucky Parole Board as described in KRS 640.080.
(2) The Cabinet for Human Resources and/or the Corrections Cabinet shall provide the Parole Board with all necessary records to conduct a hearing as described in KRS 640.100.
(3) Youthful offenders shall be subject to all sections of the Kentucky Parole Board regulations as applicable.
(4) Youthful offenders housed by the Cabinet for Human Resources shall have a hearing at a site agreed upon by that cabinet and the Parole Board.
(5) All youthful offenders housed by the Corrections Cabinet shall have a hearing at a site determined by the Parole Board.
(6) Administrative law judges shall hold preliminary revocation hearings at facilities out of sight and sound of adult inmates.
(7) Final revocation hearings for youthful offenders shall be held at a site agreed upon by the Cabinet for Human Resources and the Kentucky Parole Board or the Central Office of the Parole Board.
(8) Special hearings for youthful offenders will be held in central office.

Section 7. Conditions of Parole. (1) The general conditions are as follows:
(a) The parolee shall report to his parole officer immediately upon arrival at his destination and submit in writing once a month, or more often if directed by the officer, a report on forms prescribed by the Division of Probation and Parole.
(b) The parolee shall permit his parole officer to visit his home and place of employment at any time.
(c) The parolee shall not indulge in the use of nonprescribed controlled substances.
(d) The parolee shall work regularly and support his legal dependents. When unemployed, he shall report this fact to his officer and make every attempt to obtain other employment.
(e) The parolee shall not associate with a convicted felon except for legitimate purposes, including but not limited to family, residential, occupational or treatment purposes.
(f) The parolee shall not visit with inmates of penal institutions without permission of his parole officer.
(g) The parolee shall not leave the state, district, residence or place of employment without written permission of his parole officer.
(h) The parolee shall not be permitted to purchase, own or have in his possession a firearm or other weapon. Purchase of a firearm by a person who has been convicted of a felony is a violation of federal law.
(i) The parolee shall not violate any law or city ordinance of this state or any other state or of the United States.
(j) The parolee shall not falsify any report to his parole officer including his monthly report.
(k) The parolee does not have the right to register for voting purposes and cannot hold office; should he register or reregister prior to restoration of civil rights, he will be in violation of the law which carries a maximum penalty of five (5) years in prison.
(l) The parolee shall comply with all rules and regulations prescribed by the Division of Probation and Parole and special instructions of his parole officer.
(m) The parolee shall pay a supervision fee unless expressly waived by the Parole Board.
(2) Special conditions of parole may be added in individual cases at the discretion of the Parole Board.

Section 8. Repeal of Previous Regulation. This section repeals 501 KAR 1:011.

JOHN C. RUNDA, Ph.D., Chairman
APPROVED BY AGENCY: September 9, 1988
FILED WITH LRC: September 14, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
501 KAR 1:040E

In order to ensure that the Kentucky Parole Board regulation is consistent with its procedure for conducting parole revocation hearings, it is necessary to implement this emergency regulation. Court decisions have altered the manner in which parole revocation hearings must be conducted and therefore the previous regulation is in need of immediate replacement. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on September 12, 1988 in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor
JOHN C. RUNDA, Ph.D., Chairman

KENTUCKY PAROLE BOARD

501 KAR 1:040E. Conducting parole revocation hearings.

RELATES TO: KRS 439.315, 439.330(1)(e), 439.341, 439.390, 439.430, 439.440
STATUTORY AUTHORITY: KRS 439.340(3)
EFFECTIVE: September 14, 1988
NECESSITY AND FUNCTION: KRS 439.340(3) requires the Parole Board to establish regulations concerning parole revocation hearings. This regulation contains the procedures for the revocation of parole and the issuance of warrants by the board.

Section 1. Preliminary Revocation Hearings. Preliminary revocation hearings shall be conducted by an administrative law judge of the Parole Board who shall have control over the proceedings and the reception of evidence at such hearings. The hearings shall be conducted in accordance with applicable state and federal law and in accordance with these regulations.
(1) Charges of parole violation are initiated by a parole officer of the Corrections Cabinet by service of a notice of preliminary hearing which sets forth the alleged violations. This

notice may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, provided a finding is made that the substantial rights of the parolee will not be prejudiced by the amendment. A continuance of the proceeding may be granted in the event of such amendment, if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of such objection.

(2) Pursuant to SCR 3.700 Sub. rule 3, in the absence of an attorney to represent the Corrections Cabinet, Division of Probation and Parole, before the board and the administrative law judge, any duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the board or its administrative law judge as representative of the Corrections Cabinet in matters relating to the revocation of probation or parole.

(3) No hearing shall be conducted within ten (10) days of the service of the notice of preliminary hearing. The parolee may however, waive this waiting period. The preliminary hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.

(4) All preliminary revocation hearings shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including but not limited to electronically, mechanically or stenographically. However, the record of the proceedings need not be transcribed, unless so requested by the Parole Board.

(5) The administrative law judges may take judicial notice of acts of the Parole Board, including, but not limited to the conditions of parole, and all other matter which may be judicially noticed in the courts of this Commonwealth. Witnesses appearing at the preliminary hearing to give testimony must do so under oath, administered by the administrative law judge, and will be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. The parole officer shall bear the burden of proof in establishing the elements of the violation, except for those elements which are in the nature of affirmative defenses. The parole officer shall present evidence first and the parolee shall be given the opportunity to present evidence in defense or mitigation. Any further proceedings will be conducted at the discretion of the administrative law judge. The parolee may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, however, such evidence will be subject to rebuttal by the parole officer.

(6) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the parolee has committed any or all of the violations alleged in the notice of preliminary hearing. If probable cause is found to exist, the case shall then be referred to the Parole Board for their decision on whether a parole violation warrant should be issued, except that, upon agreement by all parties, leniency may be granted in any form deemed appropriate by the administrative law judge and upon agreement by the parolee to any additional conditions of his parole as set forth by the administrative law judge after consultation with the parole officer.

(7) In cases where the administrative law judge finds probable cause to believe that a violation of parole has been committed and the case is referred to the board for their decision on the issuance of a parole violation warrant, the administrative law judge may issue a recommendation, along with reasons in support of that recommendation, as to whether the warrant should be issued and the parolee returned for further proceedings. This recommendation shall be advisory only and shall not be binding on the board.

(8) In preliminary revocation hearings conducted on probation cases or on cases in which the releasing authority is other than the Kentucky Parole Board, upon a finding of probable cause, the matter may be referred to the releasing authority for further revocation consideration, or leniency may be considered on the same basis as a case in which the Kentucky Parole Board is the releasing authority.

(9) In those cases in which the alleged violation of parole, as set forth in the notice of preliminary hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, no cases will be referred to the board for parole revocation consideration unless it is shown that the parolee has received a conviction in a court of law or there exists some other form of judicial admission, such as a plea of guilty, concerning the alleged criminal conduct, or it is found that the criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky. Nothing in this section shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.

(10) Any party appearing before an administrative law judge of the Kentucky Parole Board may be represented by counsel if he so desires, and may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel. Except however, chronic appearance for hearing without counsel by a parolee who is capable of retaining counsel, may be deemed an implicit waiver of counsel.

(11) The administrative law judges, in the absence of any specific statutory authorization, are prohibited from considering matters of bail or any other form of release from custody for those persons accused of parole or probation violations.

(12) If a parolee allegedly has emotional problems, a written report must be received as to the emotional stability or state of the parolee prior to the preliminary revocation hearing.

Section 2. Good Cause Hearings. KRS 439.315 requires the imposition of a supervision fee on all parolees and the establishment of a good cause hearing in the event the supervision fee is not paid. This section describes the good cause hearing.

(1) Upon nonpayment of any installment of the monthly supervision fee, the parole officer shall serve a notice of preliminary hearing on the parolee and also shall serve the supplemental notice of good cause hearing on the parolee.

(2) The good cause hearing shall be scheduled as any other preliminary revocation hearing.

(3) If the parolee makes the required supervision fee payment prior to the scheduled good cause hearing, the hearing shall be cancelled.

(4) The parolee shall be permitted legal representation at the good cause hearing.

(5) The burden of proof to show good cause for nonpayment of the supervision fee shall be placed upon the parolee.

(6) The administrative law judge of the Kentucky Parole Board shall determine whether good cause exists for the nonpayment of the supervision fee.

(7) If the administrative law judge finds that good cause exists for the nonpayment of the supervision fee, the charges shall be dismissed and the parolee shall be returned to parole supervision with the previously imposed supervision fee.

(8) If the administrative law judge finds that good cause does not exist, the parole officer may request that the hearing be continued sine die with the condition that the parolee pay the arrears and agrees to pay the supervision fee on a monthly basis.

(9) If the administrative law judge finds that good cause does not exist for nonpayment of the supervision fee, absent any motion from the parole officer, the hearing shall immediately continue and become a preliminary parole revocation hearing, and shall be conducted as described in Section 1 of this regulation.

Section 3. Parole Violation Warrants. Upon referral of a case by the administrative law judge to the Parole Board for further revocation consideration, or the issuance of a warrant, the board may issue a parole violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a parole violation has taken place. Such warrant shall be issued by the chairman, except that in the absence or disability of the chairman, the signatures of four (4) board members shall be sufficient to issue a warrant. In the event there is no quorum of the board present to concur that probable cause exists, the chairman is authorized to issue a parole violation warrant if he, upon review, concurs that probable cause exists to issue said warrant. If the chairman issues a parole violation warrant in the absence of a quorum of the board, the board shall vote, as soon as is reasonable on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the chairman.

Section 4. Absconding. In cases where it appears that a parolee has absconded from parole supervision, it otherwise appears that the parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the Parole Board may, upon sworn affidavit of the supervising parole officer swearing that said violation has occurred, issue a warrant for the arrest of the parolee. In cases where the parolee is being supervised outside the state of Kentucky, a parole violation warrant may be issued based upon an unsworn written report from the supervising state setting forth facts sufficient to conclude that there is reasonable grounds to believe that a violation of parole has occurred. Except in those cases where a preliminary parole revocation hearing is held by the supervising state, upon apprehension, a preliminary parole revocation hearing is conducted as set forth elsewhere in Section 1 of this regulation, except that if the administrative law judge finds that there is probable cause to believe that any violations set forth in the warrant have been committed by the parolee and that the warrant, as to any or all charges contained within it, was validly issued, the parolee must be ordered returned to the appropriate institution of the Kentucky Corrections Cabinet for further consideration by the Parole Board except as set forth elsewhere within this section. In the event no probable cause is shown, the case must be referred to the Chairman of the Parole Board who must then withdraw the warrant, returning the parolee to supervision. Notwithstanding a finding of probable cause, the administrative law judge may, upon motion of the parole officer, or upon finding there are overwhelming mitigation factors present, not known to the board at the time the warrant was issued, refer the case back to the Parole Board for a decision as to whether the warrant should be exercised or withdrawn. This referral back to the board may include a recommendation from the administrative law judge that the warrant be rescinded. This recommendation shall be advisory only and shall not be binding on the board. If the warrant is withdrawn the parolee shall be returned to normal parole supervision, subject to any additional conditions the Parole Board may impose. If the warrant is ordered exercised, the parolee shall be ordered returned to the appropriate institution.

Section 5. Waiver of Preliminary Parole Revocation Hearings. Any parolee charged with a violation of his parole may waive appearance before an administrative law judge of the Parole Board and by so doing waive his preliminary parole revocation hearing. Parolees desiring to waive such hearings shall execute the prescribed forms which shall be submitted to the board or its administrative law judge for approval. Such waivers may be accepted within the discretion of the board or its administrative law judges. No wavier will be accepted unless it is found that the waiver was entered into by the parolee knowingly, and voluntarily and that the parolee is, and clearly understands that he is admitting guilt as to the violations charged. Notwithstanding the submission and acceptance of a waiver of the preliminary parole revocation hearing, the parolee may still submit evidence in mitigation of his conduct. After approval of the waiver, the matter will proceed in the same manner as after a hearing before an administrative law judge.

Section 6. Final Parole Revocation Hearings. Final parole revocation hearings will be held within thirty (30) days after the return of the parolee to a state institution. At this hearing, the parolee will have the charges, specified in

the warrant, explained to him and he will be given the opportunity to admit or deny them. If the inmate admits to the charges, then the board shall receive proof in mitigation of the charges. If the parolee wishes to be represented by legal counsel and wishes to present witnesses on his behalf, he must request a special hearing. If granted by the board, a short deferment shall be given so the special hearing can be scheduled in central office and the parolee can secure legal counsel. The request for a special hearing by a parolee must occur at the beginning of the final parole revocation hearing, before he admits or denies guilt. The parolee shall be notified of his right to request a special hearing at his preliminary parole revocation hearing. It is the responsibility of the parolee, and his alone, to request a special hearing if he so desires one.

Section 7. Special Hearings. (1) Special hearings will be conducted in the central office of the Parole Board, unless the Parole Board changes the site for security or other factors it deems pertinent. In cases so heard, where either the parole officer or the parolee requests the issuance of subpoenas to compel the appearance of a witness or production of documents, the board will issue them pursuant to KRS 439.390, providing no claims for expenses incurred by these witnesses will be submitted to the board, as it has no authorization to pay such expenses.

(2) At the special hearing, the following order of proceedings shall be followed:

(a) The parolee, parole officer and all witnesses shall be sworn in by the Parole Board.

(b) The board will present a short statement of the charges against the parolee.

(c) The parole officer will present proof to substantiate the charges, subject to cross-examination by the parolee.

(d) The parolee will present proof to rebut the parole officer's charges, subject to cross-examination by the parole officer.

(e) The parole officer may put on any rebuttal proof subject to cross-examination.

(f) The board may question both the parolee and the parole officer as well as any witnesses.

(g) The board will then make a determination as to whether the parolee has violated his parole.

(h) If the parolee is found in violation or if he admits the violation and has proof in mitigation, the board will receive proof from the parolee in mitigation of the violation subject to cross-examination.

(i) The board will then make a determination as to the disposition of the case and the parolee is either notified in person immediately or in writing as soon as practical.

Section 8. Waiver of Final Parole Revocation Hearing. A parolee being held pursuant to a parole violation warrant may, subsequent to his preliminary parole revocation hearing, or acceptance of a waiver thereof, request that he be allowed to waive his final parole revocation hearing. Parolees desiring to waive such hearings shall execute the prescribed form and submit it to the board. Acceptance of such waiver will be totally within the discretion of the board and only upon a finding that the waiver is entered into knowingly and voluntarily and that the parolee is admitting guilt as to the violations charged. Waiver of the right to the final hearing shall also be considered as waiver of any rights to a special hearing as provided for elsewhere in this regulation. In the event that waiver of the final hearing is accepted, the final decision on the revocation of the parolee's parole will be made by the majority vote of the board without any further proceedings.

Section 9. This section repeals 501 KAR 1:020.

JOHN C. RUNDA, Ph.D., Chairman
APPROVED BY AGENCY: September 9, 1988
FILED WITH LRC: September 14, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
501 KAR 1:050E

In order to ensure that the Kentucky Parole Board regulation is consistent with its practice of granting a final discharge from parole, it is necessary to implement this emergency regulation. This regulation will encourage and reward the successful completion of parole and thus permit parole officers to devote more time to their current caseloads. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on September 12, 1988 in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor
JOHN C. RUNDA, Ph.D., Chairman

KENTUCKY PAROLE BOARD

501 KAR 1:050E. Granting final discharge from parole.

RELATES TO: KRS 439.352, 439.356, 439.358
STATUTORY AUTHORITY: KRS 439.330(1)(g), 439.354
EFFECTIVE: September 14, 1988
NECESSITY AND FUNCTION: KRS 439.330(1)(g) establishes the authority of the Parole Board to grant a final discharge from parole. KRS 439.354 establishes the need to set a period of time which the parolee must successfully spend on parole before the granting of a final discharge from parole. This regulation establishes a set time period for the issuance of a final discharge from parole as well as specific criteria for its issuance. The purpose of this regulation is to continue to encourage lawful activity and compliance with the conditions of parole on the parolee's part and to provide successful integration back into society. All matters relating to the granting of a final discharge from parole shall be conducted in the following manner.

Section 1. A parolee may request a final discharge from parole after the expiration of twenty-four (24) months clear conduct from the date of parole and receipt, by the board, of a full report from the parole officer of the parolee's activities while on parole or the maximum expiration date for all sentences excluding a life sentence. On a life sentence, the parolee may request a final discharge from parole upon the completion of a minimum of five (5) years on active or inactive parole supervision and receipt, by the board, of a full report from the parole officer of the parolee's

activities while on parole, assuming clear conduct from the date of parole release. After ten (10) years of service on parole, the board shall consider the parolee for a final discharge from parole. However, the board retains the right to grant an early final discharge from parole.

Section 2. Upon receipt of evidence that a parolee has satisfied all preceding requirements, the chairman may issue, or cause to be issued, a certificate of final discharge from parole on any sentence upon receipt of a written request from the parole officer and considered by the full board.

Section 3. When a parolee reaches the maximum expiration date of his sentence, a final discharge from parole shall be issued automatically by the board.

Section 4. This section repeals 501 KAR 1:015.

JOHN C. RUNDA, Ph.D., Chairman
APPROVED BY AGENCY: September 9, 1988
FILED WITH LRC: September 14, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
501 KAR 6:020E

In order to continue to operate the Corrections Cabinet in accordance with KRS Chapter 196, the Corrections Cabinet needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected cabinet policies must be revised immediately to allow the cabinet's Division of Probation and Parole to add to and revise policies which will allow them to gain compliance with American Correctional Association Accreditation Standards prior to an upcoming national accreditation audit. Additional policy revisions are needed immediately to allow a change in the manner in which inmates are transported out of state, the manner in which grievances are appealed by inmates, to eliminate all devices which provide for electronic storage of data and/or information where the data can be loaded by an inmate and which can store information which may facilitate illegal activities. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on August 12, 1988 in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor
JOHN T. WIGGINTON, Secretary

CORRECTIONS CABINET

501 KAR 6:020E. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: August 16, 1988
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 August 12 [June 10], 1988 and hereinafter should be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

1.1	Legal Assistance for Corrections Staff
1.2	News Media
1.4	The operation of Contracted Adult Correctional Facilities (Added 8/12/88)
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Corrections Cabinet Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
3.1	Code of Ethics
3.2	Inclement Weather and Emergency Conditions Policy
3.3	Holding of Second Jobs by Bureau Employees
3.10	Staff Clothing and Personal Appearance
3.12	Institutional Staff Housing
3.14	Corrections Cabinet Payroll Deduction Policy and Procedure
4.1	Attendance at Professional Meetings
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
4.4	Educational Assistance Program
6.1	Open Records Law
7.2	Asbestos Abatement
8.4	Emergency Preparedness
9.1	Use of Force
9.3	Transportation of Convicted Offenders
9.4	Transportation of Inmates to Funerals or Bedside Visits
[9.5	Return of Escapees by Automobile (Deleted 8/12/88)]
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
9.9	Transportation of Inmates (Amended 8/12/88)
9.10	Security Inspections
9.11	Tool Control
9.15	Institutional Entry and Exit Policy and Procedures
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10.3	Safekeepers
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services
13.3	Medical Alert System
13.4	Health Program Audits
13.5	Acquired Immune Deficiency Syndrome
14.2	Personal Hygiene Items
14.3	Marriage of Inmates
14.4	Legal Services Program
14.6	Inmate Grievance Procedures (Amended 8/12/88)
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties

15.3 Meritorious Good Time
15.5 Restoration of Forfeited Good Time
15.6 Adjustment Procedures and Programs
16.1 General Inmate Visiting Procedure
16.2 Inmate Correspondence
16.3 Telephone Calls
16.4 Inmate Packages
17.1 Inmate Personal Property (Amended 8/12/88)
17.2 Assessment Center Operations
17.3 Controlled Intake of Inmates
18.4 Classification of the Inmate
18.5 Custody/Security Guidelines [(Amended 6/10/88)]
18.6 Classification Document
18.7 Transfers
18.8 Guidelines for Transfers Between Institutions [(Amended 6/10/88)]
18.9 Out-of-State Transfers [(Amended 6/10/88)]
18.10 Preparole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
18.15 Protective Custody
19.1 Government Services Projects
19.2 Community Services Projects
20.1 Study Release
20.6 Vocational Study Release
22.1 Privilege Trips
25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease
25.4 Inmate Furloughs (Amended 8/12/88)
25.6 Community Center Program (Amended 8/12/88)
25.7 Expedient Release
25.8 Extended Furloughs
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers
27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services [(Amended 6/10/88)]
27-07-01 Cooperation with Law Enforcement Agencies [(Amended 6/10/88)]
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision [(Added 6/10/88)]
27-11-01 Intensive Supervision (Amended 8/12/88)
27-12-01 Supervision: Case Classification [(Amended 6/10/88)]
27-12-02 Risk/Needs Assessment [(Added 6/10/88)]
27-12-03 Initial Interview [(Added 6/10/88)]
27-12-04 Conditions of Regular Supervision/Request for Modification [(Amended 6/10/88)]
27-12-05 Releasee's Report [(Amended 6/10/88)]
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan [(Amended 6/10/88)]
27-12-09 Casebook [(Amended 6/10/88)]
27-12-10 Guidelines for Monitoring Supervision Fee [(Amended 6/10/88)]
27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority [(Amended 6/10/88)]
27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority) [(Amended 6/10/88)]
27-12-13 Community Service Work
27-12-14 Client Travel Restrictions [(Amended 6/10/88)]
27-13-02 Alcohol Detection
27-14-01 Interstate Compact Transfers [(Amended 6/10/88)]
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation [(Amended 6/10/88)]
27-15-01 Supervision Report; Violations, Unusual Incidents [(Amended 6/10/88)]
27-17-01 Absconder Procedures
27-18-01 Probation and Parole Issuance of Detainer/Warrant
27-19-01 Preliminary Revocation Hearing [(Amended 6/10/88)]
27-20-01 Division of Probation and Parole Controlled Intake Program
27-20-02 Prisoner Intake Notification
27-20-03 Prisoner Status Change
27-21-01 Apprehension and Transportation of Probation and Parole Violators [(Amended 6/10/88)]
27-22-01 Fugitive Unit - Apprehensions
27-22-02 Fugitive Unit - Transportation of Fugitives
27-23-01 In-state Transfer [(Amended 6/10/88)]
27-24-01 Closing Supervision Report [(Amended 6/10/88)]
27-24-02 Reinstatement of Clients to Active Supervision [(Amended 6/10/88)]
27-25-01 Application for Final Discharge from Parole
27-26-01 Assistance to Former Clients and Dischargees
27-27-01 Restoration of Civil Rights
27-28-01 Firearms/Explosives: Application for Relief from Disability
27-29-01 Parole Review Dates Modification [(Added 6/10/88)]
28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports (Added 8/12/88)

28-02-01	Expedient Release Program [(Amended 6/10/88)]
28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release [(Amended 6/10/88)]
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations [(Amended 6/10/88)]

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: August 12, 1988
FILED WITH LRC: August 16, 1988 at 4 p.m.

STATEMENT OF EMERGENCY
501 KAR 6:030E

In order to continue to operate the Kentucky State Reformatory in accordance with KRS Chapter 196, the Corrections Cabinet needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected institutional policies must be revised immediately to allow the reformatory to implement a change in institutional policies which resulted from a change in OSHA regulations. Other changes include procedural revisions to the institution's policy regarding inmate grievance to eliminate the outside review section which is no longer required or practiced. These policies are needed to bring the Kentucky State Reformatory into compliance with standards set by the American Correctional Association for an audit scheduled in October. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on September 13, 1988 in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor
JOHN T. WIGGINTON, Secretary

CORRECTIONS CABINET

501 KAR 6:030E. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: September 14, 1988
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 September 13 [July 14], 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 (Deleted 9/13/88)]
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 (Amended 9/13/88)
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 08-00-10	Hazardous Chemicals and Material Safety Data Sheet (Added 9/13/88)
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
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence [(Amended 7/14/88)]

KSR 09-00-23	Drug Abuse Testing
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 (Amended 9/13/88)
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 (Amended 9/13/88)
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 (Amended 9/13/88)
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 (Amended 9/13/88)
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations (Amended 9/13/88)
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
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: September 13, 1988
FILED WITH LRC: September 14, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
902 KAR 4:050E

As required by federal regulations, a state plan for family planning services is required as a continuation application for federal funding for fiscal year 1988-1989. This emergency

administrative regulation is necessary in order to access federal funds in a timely manner. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler by September 15, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 4:050E. Kentucky family planning program.

RELATES TO: KRS 211.180, 214.185
STATUTORY AUTHORITY: KRS 194.050(1), 211.090, 211.180
EFFECTIVE: September 15, 1988
NECESSITY AND FUNCTION: P.L. 91-572, the "Family Planning Services and Population Research Act of 1970" and 42 CFR, Part 59, authorizes grants for family planning services. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the Kentucky Family Planning Program in accordance with applicable federal laws and regulations.

Section 1. State Plan for Family Planning Services. The Cabinet for Human Resources hereby adopts the "Kentucky State Plan for Family Planning Services - Fiscal Year 1988-1989," and the "Kentucky State Plan for Family Planning Services - Fiscal Year 1987-1988,"by reference as the Kentucky Family Planning regulation covering all phases of program operation including but not limited to program eligibility for services and provision for fee collections in accordance with federal regulations and guidelines, consent requirements, medical standards, quality assurance, and other relevant components of the program. A copy of the "Kentucky State Plan for Family Planning Services - Fiscal Year 1988-1989," and the "Kentucky State Plan for Family Planning Services - Fiscal Year 1987-88" has been filed with Region IV, Department of Health and Human Services, 101 Marietta Tower, Atlanta, GA 30323. A copy shall be on file and available for public inspection in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, KY 40621.

C. HERNANDEZ, MD, MPH, Commissioner
HARRY J. COWHERD, MD, Secretary
APPROVED BY AGENCY: September 6, 1988
FILED WITH LRC: September 15, 1988 at 10 a.m.

STATEMENT OF EMERGENCY
902 KAR 20:016E

This emergency regulation amends the portions of 902 KAR 20:016E which relate to infectious waste and waste management. The Municipal Incinerator in Louisville will begin to refuse to accept medical waste effective October 1, 1988. The proposed amendment, written before this deadline was known, will provide relief to hospitals which have utilized this facility in that it clarifies what is defined as infectious waste. This will reduce some of the costs associated with the use of private disposal firms by limiting the amount of waste requiring specific disposal methods. In order to implement these changes in a timely manner, it is necessary to promulgate this emergency regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Office of the Inspector General

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

RELATES TO: KRS 216B.010 to 216B.130, 216B.107, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 216B.040, 216B.105[, Executive Order 86-366]
EFFECTIVE: September 15, 1988
NECESSITY AND FUNCTION: KRS 216B.040 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. [Executive Order 86-366 transferred the authority to regulate health services and health facilities from the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to the Office of the Inspector General.] This regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

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

Section 2. Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.
(2) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training.
(3) "Registered records administrator" means a person who is certified as a Registered Records Administrator by the American Medical Record Association.
(4) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American

Medical Association and the American Medical Record Association; and who is certified as an Accredited Record Technician by the American Medical Record Association.

(5) "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

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

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

(8) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

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

(10) "Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.

(11) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

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

(13) "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs/tissues for transplantation.

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

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

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

(2) Administrator.

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

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

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

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

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

(3) Administrative records and reports.

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

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

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

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

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

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

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

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

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

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

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

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

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

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

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

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

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

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

(7) Transfer procedures and agreements.

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

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

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

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

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

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

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

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

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

5. Establish requirements regarding the frequency of, and attendance at, general staff and department/service meeting of the medical staff.

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

(9) Personnel.

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

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

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

1. The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of

induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

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

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

5. Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

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

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

(10) Physical and sanitary environment.

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

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

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

(d) There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines [There shall be current written infection control measures,] including:

1. Policies which address the prevention of disease transmission to and from patients; visitors and employees, including but not limited to: [Policies concerning the admission and isolation of patients with specific or suspected infectious diseases, protective isolation of appropriate patients and protective routine for personnel and visitors;]

a. Universal blood and body fluid precautions;

b. Precautions for infections which can be transmitted by the air-borne route; and

c. Work restrictions for employees with infectious diseases.

2. Policies which address the use of environmental cultures. Results of all testing shall be recorded and reported to the Infection Control Committee; and [Written procedures for the bacteriological testing of all areas of possible infection. Results of all testing shall be recorded and reported to the infection control committee;]

3. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment. [The method of control used in relation to the sterilization of supplies and water; and]

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

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

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

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

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

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

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

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

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

(g)1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after

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

2. Needles shall not be recapped, purposely bent or broken, or otherwise manipulated by hand.

3. The containers of sharp wastes shall either be incinerated on or off site, or be placed in a sanitary landfill only after processing which both autoclaves and compacts the containers.

4. Nondisposable sharps such as large-bore needles or scissors shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department in accordance with 902 KAR 20:009, Section 22.

(h)1. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of all wastes.

3. The following wastes shall be incinerated or autoclaved before disposal:

a. Microbiology laboratory waste which includes, but is not limited to viral or bacterial cultures, contaminated swabs, and specimen containers and test tubes used for microbiologic purposes; and

b. Pathological waste which includes, all tissue specimens from surgical or necropsy procedures.

4. The following wastes shall be disposed of by incineration or, be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

5. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

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

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

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose. Uncovered mobile carts may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and will be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in areas separate from clean linen. [The hospital shall establish a written policy for the handling and disposal of all infectious and pathological waste. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.]

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

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

[a. Dressings and materials from open or contaminated wounds;]

[b. Waste materials and disposable linens from isolation rooms;]

[c. Culture plates;]

[d. Test tubes;]

[e. Sputum cups; and]

[f. Contaminated sponges and swabs.]

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

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

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

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

(11) Medical records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location(s) for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission and name of attending medical staff member;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member; and, if given verbally, undersigned by the medical staff member upon his next visit to hospital;

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthetist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Physician's, or dentist's when applicable, progress notes and nurses' observations;

11. Record of temperature, blood pressure, pulse and respiration;

12. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, as is applicable;

13. Discharge summary, including condition of patient on discharge, and date of discharge;

14. In case of death, autopsy findings, if performed; and

15. In the case of death, an indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written organ procurement for transplant protocol, in consultation with an organ procurement agency, which encourages organ donation and identifies potential organ donors.

(b) In cases where an individual has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ/tissue donor.

(c) The hospital protocol shall include:

1. Criteria, developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or his designee to notify the organ procurement agency of potential organ donors;

4. Procedures by which the patient's attending physician or designee in accordance with hospital protocol shall document in the patient's medical record that the organ procurement agency has been notified in the case of potential donors or contraindications to donation.

(d) No patient with impending or declared brain death and/or cardiopulmonary death as determined pursuant to KRS 446.400 should be considered as a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his/her patient. A physician, or other member of the medical staff if so designated in the hospital bylaws, shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.

(c) The attending medical staff member shall state his final diagnosis, complete the discharge summary and sign the records within fifteen (15) days following the patient's discharge.

(d) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(e) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision

and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing care plans, and nursing care procedures.

1. Nursing care plans shall be developed for each patient and shall be kept current daily. Plans shall indicate long and short-term goals, nursing care needed, and methods, approaches and modifications necessary to insure best results for the patient.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physician, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. No medication or treatment shall be given without a written order signed by a physician or dentist, when applicable. Telephone orders for medications shall be given only to registered nurses or a pharmacist and signed by the medical staff member within twenty-four (24) hours from the time the order is given.

6. No form of patient restraint or protective device other than bed rails shall be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietician or nutritionist, either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine

examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. Laboratory services shall be under the direction of a pathologist on a full-time, regular part-time, or a consultative basis. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by a medical staff member.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their in-service training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgery shall be macroscopically, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the minimum proficiency testing and quality control provisions in accordance with Medicare certification requirements.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and disposition of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for further testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review committee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion

procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the physician's, or dentist's when applicable, original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications/prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of a physician or dentist, and the order shall contain a concise statement of the reason for the service/examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration/rehabilitation service.

(a) Hospitals in which physical restoration/rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for

coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for physical therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Physical therapy services shall be provided only upon written orders of a medical staff member.

(f) Physical therapy services shall be provided by or under the supervision of a licensed physical therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department/service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person(s) transporting patient, and time of arrival;

b. History of present complaint and physical findings;

c. Laboratory and x-ray reports, where applicable;

d. Diagnosis;

e. Treatment ordered and details of treatment provided;

f. Patient disposition;

g. Record of all referrals;

h. Instructions to the patient and/or family for those not admitted to the hospital; and

i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room(s) and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical workup in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a preanesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a postanesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The postanesthetic follow-up note shall be written <u>upon discharge from the post-anesthesia recovery area or</u> within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered <u>within thirty (30) minutes after delivery</u> [before the infant is removed from the delivery room].

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 8, 1988
FILED WITH LRC: September 15, 1988 at 10 a.m.

STATEMENT OF EMERGENCY
904 KAR 3:060E

This emergency administrative regulation revises the procedure for conducting an administrative disqualification hearing for persons who have not received proper notification of the hearing date. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 3:060E. Administrative disqualification hearings and penalties.

RELATES TO: KRS 194.050
STATUTORY AUTHORITY: KRS 194.050, 7 CFR Part 270 through 280
EFFECTIVE: September 14, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the procedures used by the cabinet to determine when an act of intentional program violation has occurred and appropriate penalties which shall be applied.

Section 1. Administrative Disqualification Hearings. An administrative disqualification hearing shall [should] be initiated by the cabinet whenever it has documented evidence to prove that a household member has committed an act of intentional program violation. An administrative disqualification hearing may be initiated regardless of the current eligibility of the individual. For purposes of determining if an act of intentional program violation, as defined in 7 CFR 273.16(c), has been committed, the [said] act shall consist of having intentionally:

(1) Made a false or misleading statement, or misrepresented, concealed, or withheld facts; or

(2) Committed any act that constitutes a violation of the Food Stamp Act, the food stamp regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP's.

Section 2. Disqualification Hearing Procedures. The cabinet shall [will] provide state level administrative disqualification hearings in accordance with 7 CFR 273.16(e) which shall [will] be heard by the fair hearing officials. Hearings shall be conducted by an impartial official(s) who did not have any personal stake or involvement in the case, who was not directly involved in the initial determination that the household member had committed intentional program violation, and was not the immediate supervisor of the case worker who took the action.

(1) The powers and duties of the hearing official shall be the same as those specified in 904 KAR 3:070, Section 12.

(2) The household's rights during the hearing shall be the same as those specified in 904 KAR 3:070, Section 13.

(3) The hearing decision shall comply with provisions specified in 904 KAR 3:070, Section 14(1).

(4) At the hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(5) Within ninety (90) days of the date the household member is notified in writing that a hearing has been scheduled, the cabinet shall conduct the hearing, arrive at a decision and notify the household member of the decision. The household member or representative is entitled to one (1) postponement not to exceed thirty (30) days, provided that the request is made at least ten (10) days in advance of the date of the scheduled hearing. If a hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

Section 3. Advance Notice of Disqualification

Hearing. The cabinet shall provide written notice to the household member suspected of intentional program violation at least thirty (30) days in advance of the date a hearing initiated by the cabinet has been scheduled. The notice shall be sent certified mail - addressee only - return receipt requested and shall contain:

(1) The date, time, and place of the hearing;

(2) The charge(s) against the household member;

(3) A summary of the evidence, and how and where the evidence may [can] be examined;

(4) A warning that the decision shall [will] be based solely on information provided by the Food Stamp Office if the household member fails to appear at the hearing;

(5) A statement that the household member or representative shall [will] have ten (10) days from the date of the scheduled hearing to present good cause for failure to appear;

(6) A warning that a determination of intentional program violation shall [will] result in a six (6) month disqualification for the first violation, a twelve (12) month disqualification for a second violation, and permanent disqualification for the third violation, and a statement of which penalty is applicable to the case scheduled for a hearing;

(7) A listing of the household member's rights as contained in 904 KAR 3:070, Section 13;

(8) A statement that the hearing shall [does] not preclude the state or federal government from prosecuting the household member for intentional program violation in a civil or criminal court action, or from collecting the overissuance;

(9) A statement advising a household member, if there are individuals or organizations which provide free legal representation, of the availability of this service.

Section 4. Scheduling the Disqualification Hearing. The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation. If the household member or its representative does not appear for the hearing, the state agency shall determine whether proper advance notice was received by the household member. If there is no proof that the household member received or refused a timely notice of the hearing, the hearing shall not be conducted and it shall be dismissed without prejudice. However, when the agency has sufficient evidence to verify that the household member either received or refused such notice, the hearing shall be conducted. [If the household member or its representative cannot be located or fails to appear at a hearing initiated by the cabinet without good cause, the hearing shall be conducted without the household member being represented.] Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional program violation was committed based on clear and convincing evidence. If the household member is found to have committed an intentional program violation but a hearing official later determined that the household member or representative had good cause as defined in 904 KAR 3:070, Section 9, for not appearing, the previous decision shall no longer remain valid and the cabinet shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. The household member shall have [has] ten (10) days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

Section 5. Participation while Awaiting a Disqualification Hearing. A pending hearing shall not affect the individual's or the household's right to be certified and participate in the program. Since the cabinet cannot disqualify a household member for intentional program violation until the hearing official or a court of appropriate jurisdiction finds that the individual has committed intentional program violation or the individual has signed a waiver of right to an administrative disqualification hearing, or the individual has signed a disqualification consent agreement, the cabinet shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household.

Section 6. Disqualification Hearing Decision. The hearing official shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed and intended to commit intentional program violation as defined in Section 1 of this regulation. Decisions of the hearing official shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent handbook section and corresponding FNS regulation and respond to reasoned arguments made by the household member or representative. An official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the hearing proceeding, shall be retained by the cabinet. This record shall also be available to the household or its representative during work hours for copying and inspection.

Section 7. Notification of Disqualification Hearing Decisions. The cabinet shall notify the household member in writing of hearing decisions as specified below:

(1) If the hearing finds that the household member did not commit intentional program violation, the cabinet shall provide a written notice which informs the household member of the decision.

(2) If the hearing finds that the household member committed intentional program violation, the cabinet shall provide written notice to the household member. This notice shall be provided prior to disqualification. The notice shall inform the household member of the disqualification and when the disqualification will take effect. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for program benefits. A list of the household member's rights shall also be printed on the notice of the hearing decision. A notice shall also be provided to the remaining household members, if any, informing them of the allotment they will receive during the disqualification period or that they may [must] reapply because their certification period has

expired. A written demand letter shall also be sent to the remaining household members explaining the repayment requirements.

Section 8. Waiver Disqualification Hearings. Individuals accused of intentional program violation shall be allowed to waive their rights to an administrative disqualification hearing and shall be handled in accordance with 7 CFR 273.16(f).

Section 9. Deferred Adjudication. Individuals accused of intentional program violation shall be allowed to sign disqualification consent agreements in cases of deferred adjudication and shall be handled in accordance with 7 CFR 273.16(h).

Section 10. Intentional Program Violation Disqualification Penalties. Individuals found through an administrative disqualification hearing to have committed an intentional program violation, or individuals who have signed a waiver of right to an administrative disqualification hearing, or individuals who have signed a disqualification consent agreement, or individuals found guilty by a court of appropriate jurisdiction shall be ineligible to participate for six (6) months for the first violation, twelve (12) months for the second violation, or permanently for the third violation. The disqualification period for a nonparticipant shall be deferred until such time as he[/she] applies for and is determined eligible for program benefits. Once a disqualification period is imposed, it shall continue uninterrupted, regardless of any subsequent determinations of eligibility/ineligibility of the disqualified member's household. Court ordered disqualifications may be imposed separate and apart from any action taken by the cabinet. In cases where the determination of intentional program violation is reversed by a court, the cabinet shall reinstate the individual, if eligible, and restore any benefits that were lost as a result of the disqualification. Individuals found guilty of intentional program violation by a court of appropriate jurisdiction shall be disqualified for the period of time specified by that court. If the court fails to specify or address a disqualification period for the intentional program violation, the cabinet shall impose a disqualification period consistent with the time periods set forth in this section and in accordance with 7 CFR 273.16(g)(2). The cabinet shall disqualify only the individual convicted of intentional program violation and not the entire household. The remaining household members shall agree to make restitution within thirty (30) days of the date the cabinet's demand letter is mailed, in accordance with established procedures for cash or coupon repayment. If the household does not agree to make restitution or after having agreed to make restitution fails to do so, allotment reduction shall be imposed on the household's monthly allotment. The cabinet shall inform the household in writing of the disqualification penalties for committing intentional program violation at each time it applies for benefits.

Section 11. Appeal Rights of the Household. No further administrative appeal procedure exists after an administrative disqualification hearing finds that an intentional program violation was committed or an individual has waived his[/her] right to an administrative disqualification hearing. The determination of intentional program violation made by a disqualification hearing official shall not [cannot] be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

Section 12. The provisions contained in this regulation shall become effective, in accordance with 272.1(g), September 1, 1988 [April 1, 1983].

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 26, 1988
FILED WITH LRC: September 14, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:013E

This emergency administrative regulation provides that out-of-state hospitals will be paid for covered inpatient services at the rate of seventy-five (75) percent of usual and customary charges. Effective September 1, 1988, the definition of disproportionate share hospital has been revised to include those hospitals with 25 percent or more nursery days resulting from Medicaid deliveries as compared to the total number of paid Medicaid days.

This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on June 30, 1988 as follows: a provision in the previously filed emergency regulation which reduced the base rate add-on for private pediatric teaching hospitals from two (2) percent for each one (1) percent of Medicaid occupancy to one and one-half (1 1/2) percent for each one (1) percent of Medicaid occupancy has been deleted, thus restoring to its original amount the base rate add-on. The revised definition of disproportionate share hospital has been added. In addition, a minor technical correction has been made to show that the usual payment rate for out-of-state hospitals also applies to hospitals in states with Medicaid payment rates based on diagnosis related groupings.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the regulations compiler on or about August 19, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: August 30, 1988
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 are required to [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 September [April] 1, 1988, which is incorporated [herein] by reference in this regulation. 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 or, effective with regard to services provided on or after September 1, 1988, twenty-five (25) percent or more nursery days resulting from Medicaid deliveries as compared to the total number of paid Medicaid days) 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 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.

(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 to this regulation [shown herein] shall be effective with regard to payments for services rendered July [April] 1, 1988, and thereafter except as specified in Sections 2 and 4(8) of this regulation.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 22, 1988
FILED WITH LRC: August 30, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:036E

This emergency administrative regulation provides that the upper limit for hospital based skilled nursing facilities will be set at 105 percent of the upper limit for freestanding facilities as compared to 135 percent at present, with the reduction to be accomplished in equal increments on January 1, 1989, October 1, 1989, and July 1, 1990. Compensation for owners and nonowner administrators has been limited. The cost incentive and investment schedules have been updated in the usual way. Coverage of reusable or disposable briefs and underpads is expanded with revision to the payment methodology, and limitations are placed on ancillary cost of urethral catheters. Other minor program corrections, clarifications or policy changes are also made.

This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on June 30, 1988 as follows: in the previously filed administrative regulation the reduction to the upper limit for hospital based skilled nursing facilities was scheduled for full implementation on July 1, 1988 rather than being phased in over an eighteen (18) month period beginning on January 1, 1989. The regulation is further amended to show the limits on nonowner administrators are not applicable to intermediate care facilities for the mentally retarded and dual licensed pediatric facilities. A program clarification relating to coverage of respiratory therapy is being made.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the regulations compiler on or about August 19, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: August 30, 1988
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. Definitions. For purpose of Sections 2 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.

(f) Respiratory therapy (excluding the routine administration of oxygen) effective September 1, 1988.

(g) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only).

(h) Ventilator therapy services, subject to the coverage limitations shown in the reimbursement manual.

(i) 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, band-aids 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.

Section 2. [1.] Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing facilities (SNFs) or intermediate care facilities (ICFs) 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 3. [2.] Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which are required to [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, which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles. The Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 4. [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 except as specified in this section, including the provisions contained in subsections (14) and (15) of this section. 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 shall [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 135 percent of the upper limit [102 percent of the median of allowable trended and indexed costs] of all other SNFs for covered services provided on or after July 1, 1988, and at 125 percent of the upper limit of all other SNFs for covered services provided on or after January 1, 1989, and at 115 percent of the upper limit of all other SNFs for covered services provided on or after October 1, 1989, and at 105 percent of the upper limit of all other SNFs for covered services provided on or after July 1, 1990 [, 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 (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Interimediate Care/Skilled Nursing Facility 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 shall [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 Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility 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 any [such] records (in a form acceptable to the cabinet) which [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.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts, effective September 1, 1988.

(16) Reimbursement paid shall [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 shall [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 is required to [must] be in the skilled nursing facility bed awaiting

placement to an intermediate care bed; and

(c) The patient is required to [must] have been reclassified from SNF patient status to ICF patient status; or, alternatively, the patient is required to [must] meet ICF patient status criteria, and the appropriate representative of the Department for Social Services is required to [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 5. [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 $75.69 effective July 1, 1988 and $70.09 effective January 1, 1989 [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 are required to [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 6. [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 is required to [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 is required to [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 are required to [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.]

[(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) 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 with regard to payments for services provided on or after July [May] 1, 1988 except as specified in Sections 1(2)(f), 4(2) and (15)(d) of this regulation.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 22, 1988
FILED WITH LRC: August 30, 1988 at 2 p.m.

AS AMENDED BY ADMINISTRATIVE BODY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following regulation was amended by the promulgating agency and the Interim Joint Committee on State Government and became effective on September 14, 1988.

PERSONNEL BOARD
(As Amended)

101 KAR 1:325. Initial probationary periods in excess of six (6) months.

RELATES TO: KRS 18A.0751, 18A.111
PURSUANT TO: KRS Chapter 13A, 18A.0751
EFFECTIVE: September 14, 1988
NECESSITY AND FUNCTION: KRS 18A.111 provides that specified job classifications may require an initial probationary period in excess of six (6) months. KRS 18A.0751 provides that initial probationary periods in excess of six (6) months be established by administrative regulation. This regulation is to implement these statutory provisions.

Section 1. Initial Probationary Periods for Specific Job Classifications. The following job classifications shall require an initial probationary period in excess of six (6) months, as specified:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Law Enforcement Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2408	MVE Trainee	12 months
2410	MVE Officer Trainee	12 months
2435	MVE Inspector Trainee	12 months
2480	Water Patrol Officer Second Class	12 months
2481	Water Patrol Officer First Class	12 months
5105	Vocational Education Instructor	12 months
5108	Industrial and Trade Instructor	12 months
5110	MSHA Instructor	12 months
5126	Teacher of Blind and/or Visually Impaired Rank III	12 months
5127	Teacher of Blind and/or Visually Impaired Rank II	12 months
5128	Teacher of Blind and/or Visually Impaired Rank I	12 months
5131	Teacher of Deaf and/or Hearing Impaired Rank III	12 months
5132	Teacher of Deaf and/or Hearing Impaired Rank II	12 months
5133	Teacher of Deaf and/or Hearing Impaired Rank I	12 months
5141	Education Teacher Rank III	12 months
5142	Education Teacher Rank II	12 months
5143	Education Teacher Rank I	12 months
7203	Forest Guard	12 months
7205	Forest Ranger	12 months
7207	Forest Ranger Unit	12 months
7209	Forest Ranger District	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months

Section 2. Other Provisions. (1) Except for the length of the initial probationary period, the provisions of 101 KAR 1:320 shall apply to an employee appointed to a job classification specified in Section 1 of this regulation.
(2) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall be required to serve the shorter of the initial probationary periods. At the time of appointment, the employee's appointing authority shall advise the employee of the period of his initial probation.

ARTHUR HATTERICK, JR., Secretary
APPROVED BY AGENCY: May 18, 1988
FILED WITH LRC: June 16, 1988 at 2 p.m.

COMPILER'S NOTE: The following regulation was amended by the promulgating agency and the Administrative Regulation Review Subcommittee on September 6, 1988 and became effective on September 9, 1988 after review by the Interim Joint Committee on Business Organizations and Professions.

GENERAL GOVERNMENT CABINET
Board of Examiners & Registration
of Landscape Architects
(As Amended)

201 KAR 10:050. Fees.

RELATES TO: 323A.060, 323A.100
STATUTORY AUTHORITY: KRS 323A.060, 323A.210
EFFECTIVE: September 9, 1988
NECESSITY AND FUNCTION: The board is authorized by KRS 323A.060 to fix by rules the fees for services and this regulation is intended to establish such fees.

Section 1. Fees. The following shall be the fees to be charged by the board and no such fee shall be refundable:
(1) Renewal fees: sixty (60) [Thirty-five (35)] dollars. The secretary shall notify all license holders of the renewal dates on May 1 of each year.
(2) Duplicate certificate: ten (10) dollars.
(3) For issuance of original license certificate: sixty (60) [Thirty-five (35)] dollars.
(4) For restoration of an expired license: restoration fee of $125 and a sixty (60) dollar renewal fee [thirty-five (35) dollars] [for each year] [(or part thereof)] [since the license expired] with penalty as provided in KRS 323A.100 [not to exceed $100].
(5) For reinstatement of a revoked license: thirty-five (35) dollars.

(6) For issuance [reissuance] of a license on reciprocity basis: $150 [Thirty-five (35) dollars].

(7) For an examination: to be determined by the board each year not to exceed $100 per section [Fifty (50) dollars].

[(8) For retaking any part of an examination within three (3) years: Five (5) dollars per part not to exceed fifty (50) dollars.]

LARRY S. PERKINS, Executive Director
APPROVED BY AGENCY: April 28, 1988
FILED WITH LRC: June 2, 1988 at 4 p.m.

COMPILER'S NOTE: The following regulation was amended by the promulgating agency and the Interim Joint Committee on Judiciary-Criminal and became effective on August 17, 1988.

CORRECTIONS CABINET
(As Amended)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: August 17, 1988
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 June 10, [March 15,] 1988 and hereinafter should be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

1.1 Legal Assistance for Corrections Staff
1.2 News Media
1.6 Extraordinary Occurrence Reports
1.9 Institutional Duty Officer
1.11 Population Counts and Reporting Procedures
1.12 Operation of Motor Vehicles by Corrections Cabinet Employees
2.1 Inmate Canteen
2.2 Warden's Fund [(Added 3/15/88)]
2.10 Surplus Property
3.1 Code of Ethics
3.2 Inclement Weather and Emergency Conditions Policy
3.3 Holding of Second Jobs by Bureau Employees
3.10 Staff Clothing and Personal Appearance
3.12 Institutional Staff Housing
3.14 Corrections Cabinet Payroll Deduction Policy and Procedure
4.1 Attendance at Professional Meetings
4.2 Staff Training and Development
4.3 Firearms and Chemical Agents Training
4.4 Educational Assistance Program
6.1 Open Records Law
7.2 Asbestos Abatement
8.4 Emergency Preparedness
9.1 Use of Force
9.3 Transportation of Convicted Offenders
9.4 Transportation of Inmates to Funerals or Bedside Visits
9.5 Return of Escapees by Automobile
9.6 Contraband
9.7 Storage, Issue and Use of Weapons Including Chemical Agents
9.8 Search Policy
9.9 Transportation of Inmates
9.10 Security Inspections
9.11 Tool Control [(Amended 3/15/88)]
9.15 Institutional Entry and Exit Policy and Procedures
9.18 Informants
9.19 Found Lost or Abandoned Property
10.2 Special Management Inmates
10.3 Safekeepers
10.4 Special Needs Inmates
11.2 Nutritional Adequacy of the Diet for Inmates
11.3 Special Diet Procedures
13.1 Pharmacy Policy and Formulary
13.2 Health Maintenance Services
13.3 Medical Alert System
13.4 Health Program Audits
13.5 Acquired Immune Deficiency Syndrome
14.2 Personal Hygiene Items
14.3 Marriage of Inmates [(Amended 3/15/88)]
14.4 Legal Services Program
14.6 Inmate Grievance Procedures
15.1 Hair and Grooming Standards
15.2 Offenses and Penalties [(Amended 3/15/88)]
15.3 Meritorious Good Time
15.5 Restoration of Forfeited Good Time
15.6 Adjustment Procedures and Programs
16.1 General Inmate Visiting Procedure
16.2 Inmate Correspondence
16.3 Telephone Calls
16.4 Inmate Packages
17.1 Inmate Personal Property
17.2 Assessment Center Operations
17.3 Controlled Intake of Inmates
18.4 Classification of the Inmate
18.5 Custody/Security Guidelines (Amended 6/10/88)
18.6 Classification Document
18.7 Transfers [(Amended 3/15/88)]
18.8 Guidelines for Transfers Between Institutions (Amended 6/10/88) [(Amended 3/15/88)]
18.9 Out-of-State Transfers (Amended 6/10/88)
18.10 Preparole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
18.15 Protective Custody
19.1 Government Services Projects
19.2 Community Services Projects
20.1 Study Release
20.6 Vocational Study Release
22.1 Privilege Trips
25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease
25.4 Inmate Furloughs
25.6 Community Center Program
25.7 Expedient Release
25.8 Extended Furloughs
[27.2 Risk/Needs Administration (Deleted 6/10/88)]
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers

27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services (Amended 6/10/88)
27-07-01 Cooperation with Law Enforcement Agencies (Amended 6/10/88)
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision (Added 6/10/88)
27-11-01 Intensive Supervision
27-12-01 Supervision: Case Classification (Amended 6/10/88)
27-12-02 Risk/Needs Assessment (Added 6/10/88)
27-12-03 Initial Interview (Added 6/10/88)
[27-12-04 Conditions of Regular Supervision/Request for Modification (Amended 6/10/88)]
27-12-05 Releasee's Report (Amended 6/10/88)
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan (Amended 6/10/88)
27-12-09 Casebook (Amended 6/10/88) [(Amended 3/15/88)]
27-12-10 Guidelines for Monitoring Supervision Fee (Amended 6/10/88)
27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority (Amended 6/10/88)
27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority) (Amended 6/10/88)
27-12-13 Community Service Work
27-12-14 Client Travel Restrictions (Amended 6/10/88) [(Amended 3/15/88)]
[27-12-15 Advanced Supervision (Deleted 6/10/88)]
27-13-02 Alcohol Detection
27-14-01 Interstate Compact Transfers (Amended 6/10/88)
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation (Amended 6/10/88)
27-15-01 Supervision Report; Violations, Unusual Incidents (Amended 6/10/88)
27-17-01 Absconder Procedures
27-18-01 Probation and Parole Issuance of Detainer/Warrant
27-19-01 Preliminary Revocation Hearing (Amended 6/10/88)
27-20-01 Division of Probation and Parole Controlled Intake Program
27-20-02 Prisoner Intake Notification
27-20-03 Prisoner Status Change
27-21-01 Apprehension and Transportation of Probation and Parole Violators (Amended 6/10/88)
27-22-01 Fugitive Unit - Apprehensions
27-22-02 Fugitive Unit - Transportation of Fugitives
27-23-01 In-state Transfer (Amended 6/10/88)
27-24-01 Closing Supervision Report (Amended 6/10/88)
27-24-02 Reinstatement of Clients to Active Supervision (Amended 6/10/88)
27-25-01 Application for Final Discharge from Parole
27-26-01 Assistance to Former Clients and Dischargees
27-27-01 Restoration of Civil Rights
27-28-01 Firearms/Explosives: Application for Relief from Disability
27-29-01 Parole Review Dates Modification (Added 6/10/88)
28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-02-01 Expedient Release Program (Amended 6/10/88)
28-03-01 Parole Plans/ Halfway Houses/ Extended Furlough/ Sponsorship/ Gradual Release (Amended 6/10/88)
28-04-01 Furlough Verifications
28-05-01 Out-of-state Investigations (Amended 6/10/88)

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY AND SUBCOMMITTEE: August 17, 1988

COMPILER'S NOTE: The following regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on September 6-7, 1988 and became effective on September 13, 1988 after review by the Interim Joint Committee on Judiciary-Criminal.

CORRECTIONS CABINET
(As Amended)

501 KAR 6:110. Roederer Farm Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: September 13, 1988
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) (Amended 9/6/88)
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) (Amended 9/6/88)
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) (Amended 9/6/88)
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) (Amended 9/6/88)
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) (Amended 9/6/88)
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.

CORRECTIONS CABINET
Department of Local Facilities
(As Amended)

501 KAR 9:020. Administration; management.

RELATES TO: KRS 441.057
STATUTORY AUTHORITY: KRS 441.057
EFFECTIVE: September 13, 1988
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 645 [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

CORRECTIONS CABINET
Department of Local Facilities
(As Amended)

501 KAR 9:050. Physical plant.

RELATES TO: KRS 441.057
STATUTORY AUTHORITY: KRS 441.057
EFFECTIVE: September 13, 1988
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) **square** 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

CORRECTIONS CABINET
Department of Local Facilities
(As Amended)

501 KAR 9:090. Medical services.

RELATES TO: KRS 441.057
STATUTORY AUTHORITY: KRS 441.057
EFFECTIVE: September 13, 1988
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) **inmates** [juveniles].

(b) Three (3) times per week, in facilities with an average daily population for the preceding month from fifty-one (51) to 200 **inmates** [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
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CORRECTIONS CABINET
Department of Local Facilities
(As Amended)

501 KAR 9:100. Food services.

RELATES TO: KRS 441.057
STATUTORY AUTHORITY: KRS 441.057
EFFECTIVE: September 13, 1988
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, unless otherwise prescribed by a medical authority.
(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
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CORRECTIONS CABINET
Department of Local Facilities
(As Amended)

501 KAR 9:120. Admission; release.

RELATES TO: KRS 441.057
STATUTORY AUTHORITY: KRS 441.057
EFFECTIVE: September 13, 1988
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 uniform offense report [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

CORRECTIONS CABINET
Department of Local Facilities
(As Amended)

501 KAR 9:150. Hearings, procedures, disposition.

RELATES TO: KRS Chapter 441
STATUTORY AUTHORITY: KRS 441.075 [441.013]
EFFECTIVE: September 13, 1988
NECESSITY AND FUNCTION: The Secretary of the Kentucky Corrections Cabinet is authorized by KRS 441.075 [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 441.075 [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 441.075 [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 441.075 [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

COMPILER'S NOTE: The following regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on September 7, 1988. These regulations shall become effective upon adjournment of the appropriate jursdictional subcommittee meeting at which they have their second review.

TRANSPORTATION CABINET
Department of Highways
Division of Planning
(As Amended)

603 KAR 5:070. Truck dimension limits.

RELATES TO: KRS 189.222
STATUTORY AUTHORITY: 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. **In a tractor semitrailer-semitrailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer which allows for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length; however, when there is no second semitrailer mounted to the fifth wheel, the length of the extension shall be included in the length measurement for the semitrailer.**

(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.]

Pennyrile Parkway - Concurrent with US 41 from south of Nortonville to north of Madisonville.

Pennyrile Parkway - From north of Madisonville to US 41 in Henderson.

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 - **The** [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 41 - Concurrent with Pennyrile Parkway from south of Nortonville to north of Madisonville.

US 41 - From Pennyrile Parkway at Henderson to Indiana state line.

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 US 51 in Wickliffe to I-24 in McCracken County.

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 PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Building Codes Enforcement
(As Amended)

815 KAR 7:020. Building code.

RELATES TO: KRS Chapter 198B
STATUTORY AUTHORITY: 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) "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) [(a)] "Construction: The erection, fabrication, reconstruction, substantial alteration or conversion of a building, or the installation of equipment therein."

(c) [(b)] "Equipment: Facilities or installations including but not limited to, heating, electrical, ventilating, air-conditioning, and refrigerating facilities or installations."

(d) [(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."

(e) [(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."

(f) [(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."

(g) [(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.")]

(h) [(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."

(i) "TIA or Tentative Interim Amendment": means a publication of the National Fire Protection Association Standards Council which is a tentative amendment of the National Electrical Code referenced in Section 1 of this regulation because it has not been processed through the entire standards-making process; and it is interim because it is effective only between editions of the standard. As used in this regulation, it is a permanent provision until otherwise amended.

(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 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 **Tentative Interim Amendment** [TIA] #87-4, dated April 6, 1988, is incorporated by reference and [of NFPA] shall be deemed to satisfy the intent of the Code. **Copies of which are available from the Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, KY 40601.**"

(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
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PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(As Amended)

815 KAR 20:060. Quality and weight of materials.

RELATES TO: KRS Chapters 198B, 318
STATUTORY AUTHORITY: KRS 13A.120, 198B.040(10), 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 and is necessary to establish minimum standards for this quality and weight and to conform to accepted practices.

Section 1. Definition of Terms. (1) ABS - acrylonitrile-butadiene-styrene.

(2) ASSE - American Society of Sanitary Engineers.

(3) ASTM - American Society for Testing and Materials.

(4) Drain pipe - any pipe which carries wastewater or waterborne wastes in a building drainage system.

(5) Drainage System - includes all the piping within a public or private premises which conveys sewage, rain water or other liquid wastes to a point of disposal. It does not include the mains of public sewer systems or a private or public sewage treatment or disposal plant.

(6) DWV pipe - an abbreviated term for drain, waste and vent piping, including aluminum, as used in common plumbing practice.

(7) Plumbing system - includes the water supply and distribution pipes; plumbing fixtures and traps; soil, waste and vent pipes; and sanitary and storm sewers and building drains; including their respective connections, devices and appurtenances within a building or premises.

(8) Potable water - water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the Public Health Service Drinking Water Standards or the regulations of the public health authority having jurisdiction.

(9) PVC - polyvinyl chloride.

(10) Stack - a general term for any vertical line of soil, waste, vent, or inside conductor piping, except vertical vent branches which do not extend through the roof and which pass through less than two (2) stories before being reconnected to a vent stack or stack vent.

(11) Trap - a fitting or device which provides a liquid seal to prevent the emission of sewer gases without materially affecting the flow of sewage or wastewater through it.

(12) Vent system - a pipe or pipes installed to provide a flow of air to or from a drainage system, or to provide a circulation of air within such system to protect trap seals from siphonage and back pressure.

(13) Waste pipe - a pipe which conveys only waste.

Section 2. [1.] Materials, Quality of. All materials used in any drainage or plumbing system or part thereof, shall be free of defects.

Section 3. [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 4. [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 **shall be used only** [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 5. [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 6. [5.] Wrought-iron Pipe. All wrought-iron pipe shall conform to the latest ASTM "standard specifications for welded wrought iron pipe."

Section 7. [6.] Mild-steel Pipe. All steel pipe shall conform to the latest ASTM "standard specifications for welded and seamless steel pipe."

Section 8. [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 9. [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 10. [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 shall [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 11. [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 Per Foot Pounds	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 12. [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, may be used.

Section 13. [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 14. [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 15. [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 16. [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 17. [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 18. [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 19. [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 20. [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 in the code [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. Procedural requirements for approval of new parts and materials are set forth in 815 KAR 20:020.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
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PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(As Amended)

815 KAR 20:100. Joints and connections.

RELATES TO: KRS 198B.040(7), 198B.050(2), Chapter 318
STATUTORY AUTHORITY: KRS 13A.120, 198B.040(10), 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 <u>for use on house sewers and combination sewers only</u>. 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 PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(As Amended)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 13A.120, 198B.040(10), 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. Definition of Terms. (1) ASSE - American Society of Sanitary Engineers.
(2) ASTM - American Society for Testing Materials.
(3) Critical level (CL) - 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.
(4) DWV - drain, waste and vent piping.
(5) SDR - standard dimensional ratio.

Section 2. [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 shall be [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 **shall** [will] be installed [located] in the cold water supply **located** 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 **shall** [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 **shall not be** [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 **shall** [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:

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

	Degree of Hazard			Acceptable Protection				
					Backflow		Back siphonage	
Type of Connection	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 shutoff 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	N O	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.	N T O X I C	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

Section 3. [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 4. [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 5. [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 6. [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 7. [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 8. [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 9. [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 10. [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 11. [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 12. [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 13. [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 14. [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 15. [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 16. [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 **shall** [must] be used at all times and that a pressure relief valve is installed at the highest point in the solar panel.

Section 17. [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 **shall** [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 **shall** [must] be utilized.

Section 18. [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 19. [18.] Water Distribution for Fan Coil Units. When a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall [must] not exceed 140 degrees Fahrenheit. It shall [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 20. [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 shall [must] be of the double check valve assembly as outlined in part 2 or 3 of the application chart.

Section 21. [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 shall [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 22. [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 PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(As Amended)

815 KAR 20:191. Minimum fixture requirements.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 13A.120, 198B.040(10), 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 **shall** [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 **shall** [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 **shall** [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 **shall** [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 **shall** [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.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(As Amended)

902 KAR 50:120. Unpasteurized goat milk.

RELATES TO: KRS Chapter 217C
STATUTORY AUTHORITY: 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 1,000,000 [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.

AMENDED AFTER HEARING

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

401 KAR 4:100. Wild Rivers boundaries.

RELATES TO: KRS 146.241 [146.240], 146.250
STATUTORY AUTHORITY: KRS 146.270, 224.033, 224.045 [146.250]
NECESSITY AND FUNCTION: KRS 146.250 directs the Secretary to determine generally the boundaries of the Wild Rivers designated in KRS 146.240. The boundaries must include at least the visual horizon of the stream but not extend more than 2,000 feet from the center of the stream. The statute further requires that the Secretary designate access points at the upper and lower boundaries of each stream. This regulation incorporates by reference maps adopted and filed with the regulation delineating the general boundaries of each stream area and specifies the access points to each area. The maps are incorporated by reference as they are too large and cumbersome for reproduction. Copies of the maps are available by request from the Division of Water, Natural Resources and Environmental Protection Cabinet, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

Section 1. The boundaries of the stream area of the Cumberland River are as delineated on the map captioned "Designated Wild River Area, Cumberland River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where Ky. 204 approaches the Cumberland River below Summer Shoals and the lower access point is at Cumberland Falls State Park.

Section 2. The boundaries of the stream area of the Red River are as delineated on the map captioned "Designated Wild River Area, Red River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where Ky. 746 crosses the Red River and the lower access point is the area where Ky. 715 crosses the river.

Section 3. The boundaries of the stream area of the Rockcastle River are as delineated on the map captioned "Designated Wild River Area, Rockcastle River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where Ky. 80 crosses the Rockcastle River and the lower access point is the area where Ky. 192 crosses the river.

Section 4. The boundaries of the stream area of the Green River are as delineated on the map captioned "Designated Wild River Area, Green River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where Dennison Ferry [Big Woods] Road meets the Green River and the lower access point is the area of Lock No. 6 on the Green River.

Section 5. The boundaries of the stream area of the Big South Fork of the Cumberland River are as delineated on the map captioned, "Designated Wild River Area, Big South Fork, Cumberland River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where Difficulty Creek joins the Big South Fork and the lower access point is the area where the Blue Heron Road ends.

Section 6. The boundaries of the stream area of [the] Martins Fork of the Cumberland River are as delineated on the map captioned "Designated Wild River Area, Martins Fork, Cumberland River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where [the] Martins Fork flows from the Cumberland Gap National Historical Park and the lower access point is the area where Ky. 987 crosses the mouth of Laurel Branch Creek.

Section 7. The boundaries of the stream area of Rock Creek are as delineated on the map captioned "Designated Wild River Area, Rock Creek," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where the Rock Creek Bell Farm Road crosses Big Branch. The lower access point is at the White Oak Junction Bridge.

Section 8. The boundaries of the Little South Fork of the Cumberland River are as delineated on the map captioned "Designated Wild River Area, Little South Fork, Cumberland River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where the East Coopersville Road fords the Little South Fork and the lower access point is the area where the Lower Morrow Hollow Road crosses the Little South Fork.

Section 9. The boundaries of the stream area of Bad Branch are as delineated on the map capitoned "Designated Wild River, Bad Branch," which map is hereby adopted and incorporated herein by reference. The upper access point is the headwaters on Pine Mountain and the lower access point is the area where Ky. 932 crosses Bad Branch.

CARL H. BRADLEY, Secretary
APPROVED: September 7, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

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

401 KAR 4:110. Definitions for 401 KAR 4:120 to 4:140.

RELATES TO: KRS 146.220, 146.241 [146.240], 146.250, 146.260, 146.270, 146.290, 146.310, 146.350, 146.360
STATUTORY AUTHORITY: 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) "Acid-forming substance" means an earth substance that contains sulfide minerals or other materials which, if exposed to air, water, or weathering processes, forms acids that may create acid water.

(3) "Acid water" means drainage with a pH of less than six (6.0) in which total acidity exceeds total alkalinity.

(4) [(2)] "Adverse impact" means having a damaging, degrading or destructive effect on a resource.

(5) [(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.

(6) [(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.

(7) [(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.

(8) [(6)] "Buffer zone" means an area of natural vegetation having a minimum width of not less than 100 feet, which is retained along each [the] bank of a wild river[s 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.

(9) [(7)] "Cabinet" means the Natural Resources and Environmental Protection Cabinet.

(10) [(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.

(11) [(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.

(12) [(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.

(13) [(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.

(14) [(12)] "Disturbed area" means an area having a manmade surface disturbance.

(15) [(13)] "Division" means the Division of Water.

(16) [(14)] "Existing use" means a land use which is in existence at the time a wild river is [the boundaries of a wild river corridor are] designated by the Kentucky General Assembly.

(17) [(15)] "Floodplain" means the area in a watershed that is subject to flooding at least one (1) time in every 100 years.

(18) [(16)] "Kentucky Wild Rivers Act" means KRS 146.200 to 146.360, as amended.

(19) [(17)] "Landowner" means the owner of [the surface rights of] a property or an [the owner of severed mineral rights or] interest in a property conveyed by lease or other legal conveyance [the mineral rights in cases where a proposed change of use involves extraction of subterranean resources].

(20) [(18)] "Land use plan" means a plan of action submitted to the cabinet as part of a change of use permit application.

(21) [(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.]

(22) [(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.

(23) [(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.

(24) [(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.

(25) [(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 wild river corridor is [are] designated by the Kentucky General Assembly.

(26) [(25)] "Operator" means the person, partnership, contractor, subcontractor, company or corporation responsible for the construction, maintenance, operation and reclamation of a permitted use.

(27) [(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.

(28) [(27)] "Permittee" means a landowner who has obtained a change of use permit from the cabinet.

(29) [(28)] "Produced water" means water and pollutants and combination thereof resulting, obtained or produced from the exploration, drilling or production of oil or gas.

(30) [(29)] "Professional forester" means a person holding a degree in forestry from a school with an accredited forestry program.

(31) [(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.

(32) [(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.

(33) [(32)] "Secretary" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(34) [(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.

(35) [(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.

(36) [(35)] "Skid" means to transport logs by sliding or dragging along the ground.

(37) [(36)] "Skid trail" means a trail developed for the purpose of skidding logs from the stump to a log landing area.

(38) [(37)] "Slash" means the residue left after the economically usable portion of cut trees is removed from a harvest area.

(39) "Structure" means an above-ground object constructed, built or installed for a change of use, and shall exclude sediment ponds, roads and signs.

(40) [(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.

(41) "Surface mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, construction, or other use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

(42) "Toxin-forming substance" means earth materials or wastes which, if exposed to air, water, weathering, or microbiological processes, are likely to produce conditions that are detrimental to biota or uses of water.

(43) "Underground mining" means those aspects of deep mining, including surface effects, involving any open pit or any underground workings from which minerals, ores or other solid matter is removed for sale, exchange, commercial, or other use, and all shafts, drifts, or inclines leading thereto, including all buildings and equipment, above or below the surface of the ground, used in connection with such workings.

(44) [(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.

(45) [(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.

(46) [(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.

(47) [(42)] "Wild rivers system" means the collective wild rivers as designated in KRS 146.241 and amendments.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 7, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

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

401 KAR 4:120. Wild rivers administration and management.

RELATES TO: KRS 146.220, 146.270, 146.290, 146.310, 146.350, 224.045, 224.281, 224.083, 224.085

STATUTORY AUTHORITY: 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. Nothing herein shall be construed as superseding any requirements of other cabinet programs or of other state or federal agencies.

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. The cabinet will not make efforts to attract visitors to areas where it has been determined that the

carrying capacity for one (1) or more uses has been reached or exceeded.

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 **public** use of [public waters and] state-owned lands within wild river corridors [by the public].

(2) **The cabinet will make every effort to inform the public that the wild river designation does not authorize public use of privately-owned lands, and will prepare** maps delineating the boundaries of public lands within wild river corridors **to reduce unintentional trespassing** [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 **cabinet** [management agency] may condition or deny public **access to** [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 **shall comply with** [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 **and** [, bathing or] other in-stream recreational uses 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 **property** 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 **constructed within a wild river corridor** [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 **cabinet** [management agency], or cause substantial damage to soils, vegetation, fish and wildlife or water quality.

(4) The **cabinet** [management agency] may condition or deny commercial use of a wild river, as provided in Section 7(4) [(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 **that may affect** [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 **sixteen (16)** [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).

(6) Orders for remedial action and recovery of penalties will be sought pursuant to KRS 146.350.

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: September 7, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

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

401 KAR 4:130. Wild rivers change of use permit procedures.

RELATES TO: KRS 146.220, 146.270, 146.290, 146.990
STATUTORY AUTHORITY: 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 **on state-owned or private lands** 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. **Nothing herein shall be construed as superseding any requirements of other cabinet programs or of other state or federal agencies.**

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 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 **from blasting** 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 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: September 7, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

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

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, 151.140

STATUTORY AUTHORITY: KRS 146.270, 151.125, 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. Nothing herein shall be construed as superseding any requirements of other cabinet programs or of other state or federal agencies.

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) Any [There shall be no] new discharge of a substance or combination of substances into a surface water within a wild river corridor shall maintain or enhance background water quality in the receiving stream.

(3) Water quality data shall be collected [required by the cabinet] as necessary to document maintenance of [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 or fish and

wildlife 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 ponds and filters, such as baled vegetation, [straw bales or filter fences,] shall be used as necessary to trap sediment within disturbed areas. Filter fences may be used in situations where other methods may not provide adequate control.

(c) On slopes of ten (10) percent [degrees] or more, diversion structures shall be installed uphill of disturbed areas as needed 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) Intermittent streams which are tributaries of a wild river may [No stream shall] be temporarily [diverted, obstructed,] impounded or otherwise altered to effect a permitted use, [, and] Streambed materials shall not be moved or removed from the [a] streambed of a permanent or intermittent stream 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) Stream crossings shall occur only [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 designed to handle a ten (10) year, twenty-four (24) hour precipitation event, and shall be [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 constructed to effect a permitted use shall be closed [to vehicular use] by means of a locked gate located at or near 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 or [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 permitted [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 **existing** [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 **randomly placed** [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: September 7, 1988
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Hearing)

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

RELATES TO: KRS Chapter 224
STATUTORY AUTHORITY: KRS 224.033(17)
NECESSITY AND FUNCTION: This regulation provides definitions and administrative procedures authorized for the issuance of permits for the construction and operation of sewage systems authorized under KRS Chapter 224. The regulation also establishes a schedule of fees to recover the costs of issuance for certain classes of permits.

Section 1. Definitions. (1) "Agricultural wastes handling system" means a no-discharge structure or equipment that conveys, stores, or treats manure from a concentrated animal feeding operation prior to land application.

(2) "Cabinet," means the Natural Resources and Environmental Protection Cabinet.

(3) "Division" means the Division of Water.

(4) "Establishment" means any industrial plant, mill, factory, tannery, paper or pulp mill, mine or mineral processing or producing facility, quarry, oil refinery, boat, vessel or other type of commercial, manufacturing or industrial works or facility in the operation of which sewage, industrial wastes or other wastes are produced or stored.

(5) "Facility" for the purpose of this regulation means a sewage system as defined in KRS 224.005[(20)] except for septic tanks, pretreatment facilities, and disposal wells as defined in 401 KAR 5:090.

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

(7) "Intermediate facility" means a treatment facility with an average daily design flow of 10,000 to 49,999 gallons per day or of sewer lines of more than 2,500 feet to 5,000 feet in length including appurtenances.

(8) "Large facility" means a treatment facility with an average daily design flow of 50,000 gallons per day or more or of sewer lines of more than 5,000 feet in length including appurtenances.

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

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

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

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

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

(14) "Sewer line" means those devices used for collecting, pumping, and disposing of sewage, but not those devices used for tap-ons by individual discharges.

(15) [(14)] "Small facility" means a treatment facility with an average daily design flow less than 10,000 gallons per day or a sewer line of less than 2,500 feet in length including appurtenances.

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

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

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

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

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

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

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

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

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

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

(2) Any proposed large facility shall submit a preliminary or facilities plan to the cabinet. Said plan shall include:

(a) A seven and one-half (7 1/2) minute, United States Geological Survey topographic map

with the projected service area outlined and the discharge point identified thereon.

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

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

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

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

Section 6. Plans and Specifications. (1) Not fewer than three (3) sets of detailed plans and specifications shall be submitted to the cabinet. The submittal shall be accompanied by a completed permit application form provided by the cabinet.

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

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

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

Section 7. Design Considerations. (1) Specific design criteria for any facility shall be controlled by current engineering practice. Some references to current engineering practice can be found in the following: "Guidelines for Design, Operation and Maintenance of Waste Water Treatment" by the United States Environmental Protection Agency; the latest edition of "Recommended Standards for Sewage Works of the Great Lake-Upper Mississippi River Board of Sanitary Engineers," and the Water Pollution Control Federation's "Manual of Practice No. 8 and 9."

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

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

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

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

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

(4) A recording flow-measuring device shall be installed at each large facility. Any facility may estimate flow from a measuring device at the plant.

(5) Infiltration/exfiltration.

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

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

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

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

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

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

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

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

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

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

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

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

Facility Category	Construction Permit Fee
Large Facility	$1,800 [$1,000]
Intermediate Facility	$ 900 [$ 500]
Small Facility	$ 450 [$ 250]
Large Facility: Sewer Lines	$ 800
Intermediate Facility: Sewer Lines	$ 400
Small Facility: Sewer Lines	$ 200

(5) If the cabinet has delegated to a local or regional agency, through formal written agreement, review responsibility for sewer lines, a twenty (20) dollar fee per approval letter will be charged in lieu of the sewer line fees described in subsection (4) of this section.

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

(7) The provisions of this section shall apply to permit applications submitted on or after October 1, 1988 and to applications which are not completed by October 1, 1988. Permit applications which are completed by October 1, 1988 shall be subject to this section as in effect on December 10, 1985.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Hearing)

401 KAR 5:010. Certification of wastewater system operators.

RELATES TO: KRS 224.135
STATUTORY AUTHORITY: KRS 224.032, 224.033(17)
NECESSITY AND FUNCTION: The secretary is directed to adopt regulations applicable to certification of wastewater system operators. This regulation establishes standards for classification of wastewater systems; qualifications of applicants; examination procedures; duties of the board; provisions relating to the issuance, renewal or revocation of certificates, fee schedule and other provisions necessary for certification of operators; and other operational provisions related to the functions of the wastewater operators certification board.

Section 1. Definitions. The following terms shall have the meanings set forth below unless the context clearly indicates otherwise:

(1) "Board" means the Kentucky Board of Certification of Wastewater System Operators.

(2) "Cabinet" means the Kentucky Natural Resources and Environmental Protection Cabinet.

(3) "Secretary" means the secretary of the cabinet.

(4) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met all requirements for the specified operator classification as set by this regulation.

(5) "Division" means the Division of Water, Natural Resources and Environmental Protection Cabinet.

(6) "Operator" means the person having primary responsibility of a wastewater system or any portion thereof which may affect the performance of the system.

(7) "Primary responsibility" means having the authority to conduct or supervise the procedures and practices necessary to insure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws and regulations of the Commonwealth.

(8) "Wastewater system" means the system of pipes, structures, equipment and processes required to collect, carry and treat domestic and/or industrial wastewater, including solids handling. The term "wastewater system" is synonymous and interchangeable with the term "sewage system."

(9) "Association of Boards of Certification for Operating Personnel in Water and Wastewater Utilities (ABC)" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems and state programs, and assists authorities in establishing new certification programs and upgrading existing ones.

Section 2. General Provisions. (1) Each wastewater system must be operated under the supervision of an individual holding a current Kentucky operator's certificate for at least the class of system he/she supervises. Certified operators are required for the operation of all wastewater treatment facilities.

(2) In the event the operator with primary responsibility is not physically present while a system is operating, he/she must be reasonably available. Such availability shall be determined by the board on a case-by-case basis.

(3) An industrial certification is available for operators of pretreatment facilities. However, operators of such facilities are not required to obtain this or any other form of certification.

Section 3. Duties of the Board. (1) In carrying out its responsibilities the board shall among other things:

(a) Examine the qualifications of applicants for certification.

(b) Recommend qualified applicants for certification by the cabinet.

(c) Review and provide comments to the cabinet on proposed wastewater treatment plant operator regulations or revisions to regulations dealing with wastewater treatment plant operator certification.

(d) Review and make recommendations to the cabinet on training materials and methods dealing with the certification of wastewater treatment plant operators.

(e) Perform such other and further acts as may be necessary to carry out the duties and responsibilities as herein described.

(f) Review and approve by the first of January of the first year of the renewal period the draft schedule of reasonable fees submitted by the cabinet.

(g) Provide for distribution of the approved fee schedule to all affected operators prior to the beginning of each renewal period.

(2) In carrying out its certification responsibilities, the board may establish minimum criteria and provide a general recommendation for certification for all applicants who exceed them.

Section 4. Application for Certification. (1) An operator desiring to be certified shall file application with the cabinet preceding examination on an application form provided by the cabinet.

(2) The executive secretary and treasurer of the board shall assemble all the information needed by the board or cabinet to determine eligibility of the applicant for examination and certification.

(3) The board or cabinet shall review applications and supporting documents, determine the eligibility of the applicant for examination and notify him/her of his/her status.

Section 5. Examinations. (1) The board and the cabinet shall be jointly responsible for preparation of the examinations to be used in determining knowledge, ability and judgment of the applicants. The examination questions promulgated by the ABC shall be used as a guideline.

(2) Examinations shall be held at places and times set forth by the cabinet. The examinations shall be conducted at least semiannually.

(3) Except in cases which the board may decide represent proper exceptions, all examinations shall be written. All examinations will be graded by the board, or by the cabinet and the applicant notified of the outcome. Papers will not be returned to the applicant, but means will be provided to review the results with a member of the board or cabinet upon request by the applicant.

(4) Separate examinations will be prepared to cover basic differences in the duties and responsibilities of operators, types of facilities, variations in wastewater quality, conditions of receiving waters and other pertinent matters.

(5) Applicants who fail to pass an examination may reapply for the examination at a regularly scheduled examination or by appointment with the cabinet.

Section 6. Fees. (1) Fees for certification of operators of wastewater systems shall **not exceed the following** [be as follows]:

(a) Examination: thirty-five (35) [fifteen (15)] dollars.

(b) Renewal of certificate: thirty-five (35) [twelve (12) dollars per biennium beginning April 9, 1985, and sixteen (16)] dollars per biennium [beginning March 1, 1987]. Limited certificates: twenty (20) [six (6) dollars per year beginning March 1, 1985 and eight (8)] dollars per year [beginning March 1, 1987].

(c) Certification by reciprocity: fifteen (15) dollars.

(2) For training sessions conducted by the cabinet: five (5) dollars per contact hour.

(3) [(2)] Fees accompanying applications will not be returned to those who do not pass the examination.

(4) The cabinet will provide an estimate of program costs for the upcoming renewal period and a draft schedule of reasonable fees for that renewal period to the board for approval by the first of November prior to the beginning of the new renewal period.

Section 7. Issuance of Certificates. (1) Upon satisfactory fulfillment of the requirements provided herein and upon recommendation of the board of certification, the cabinet shall issue a suitable certificate to the applicant designating his/her competency. This certificate will indicate the classification of the wastewater system for which the operator is qualified.

(2) All certificates shall expire at midnight on February 28 of odd-numbered years. Certificates of operators in good standing will be renewed automatically upon written application and submission of applicable renewal fee to be received by the cabinet before June 1 of each renewal year. If the application and fee are not received by the cabinet prior to June 1, the certificate shall be invalid and the operator shall be required to obtain a new certificate as provided in subsection (5) of this section. Limited certificates shall expire each year on midnight of the last day of February and may be renewed only after the cabinet has timely received the required written application and renewal fee, and certified that the holder of the certificate has substantially complied with all requirements for properly operating the facility under his/her responsible charge.

(3) Certified operators who desire to become certified in a higher classification must first satisfactorily complete the requirements for the higher classification before a new certificate is issued. Experience under a limited certificate does not count toward fulfillment of qualifications for other classifications.

(4) Certificates shall be valid only so long as the holder uses reasonable care, judgment and application of his/her knowledge in the performance of his/her duties. No certificate will be valid if obtained through fraud, deceit or the submission of inaccurate data on qualifications.

(5) The certificates of operators who terminate their employment at a wastewater system will be valid for four (4) years providing they are renewed as required by subsection 2 of this section, except for limited certificate holders. After four (4) years, the certificate will be automatically invalidated. Limited certificates become invalid immediately if not renewed. Operators whose certificates are invalidated may be issued new certificates of like classification provided appropriate proof of competency is presented to the board. Successful completion of a written or oral examination shall be required by the board.

(6) Certificates may be issued at the discretion of the board in a comparable classification to any person who holds a valid certificate in any state, territory, or possession of the United States or any country provided the requirements for certification of operators under which the person's certificate was issued do not conflict with any provisions of KRS Chapter 224 and are of a comparable standard; and, providing further, that reciprocal privileges are granted to certified operators of this state.

(7) Certificates shall be prominently displayed in the office of the operator.

(8) Certificates heretofore issued by the cabinet shall continue in full force and effect,

unless revoked for cause, until such time as the cabinet issues new certificates based upon the classifications provided herein.

(9) Training requirements.

(a) Class III and Class IV operators shall have accumulated twelve (12) hours per year of appropriate board approved training for certificate renewal. Class I and II operators shall complete six (6) hours of training per year for renewal. Such training shall include, but may not be limited to, correspondence courses, short courses, trade association meetings, and on-the-job training. However, at least one-half (1/2) of the training required for recertification shall be in process control and operation or in the basic sciences related to these topics. Training hours accumulated in any biennium in excess of the minimum requirement necessary for renewal may be carried forward to the next renewal period. No training is required for holders of limited or industrial certificates.

(b) Certified operators who teach board-approved training courses may receive hour-per-hour credit for actual instruction time, provided, however, that for courses taught more than once during a renewal period, credit will be allowed for only one (1) period of instruction.

(c) The criteria used for determining whether to approve training, other than the training provided by the cabinet, are:

1. The ability of the course to provide information that will enhance the proper operation and maintenance of wastewater treatment facilities; and

2. The ability of the instructor to properly present such information.

Therefore, in making its determination regarding approval of training courses the board will require that at least the following specifics about the course be submitted: the course name; the date, location, and the beginning and ending times of the course; a summary of the course content of sufficient detail to determine relevance and quality of the course; and the name and credentials of each instructor for the course.

(d) The board may waive any or all of the requirements of paragraph (a) of this subsection for all or portion(s) of a class of operators as defined in Section 11 of this regulation when the board has determined, based on information it has gathered, that such action is appropriate and justified.

Section 8. Revocation of Certificates. The cabinet may revoke the certificate of an operator, following a hearing before the board and upon recommendation by the board, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment or the application of his/her knowledge was not used in the performance of his/her duties; or that the operator is incompetent or unable to properly perform his/her duties.

Section 9. Classification of Wastewater Systems. Wastewater systems shall be classified in one (1) of five (5) classes. These classifications shall be made according to population served, type of work, character and volume of wastes to be treated, and the use and nature of the waters receiving the system effluent. Classifications I through IV shall be based on the population served or for which the system is designed except that systems may be classified in a group higher than indicated at the discretion of the cabinet by reason of the incorporation in the system of special features of design or characteristics more difficult to operate than usual, or by reason of conditions of flow or use of the receiving water requiring an unusually high degree of system operation control, or for combinations of such conditions or circumstances. In addition, a limited classification is available for operators of wastewater facilities at schools. Classes I through IV are defined as:

(1) Class I: Systems with a design capacity of less than or equal to 300,000 gallons per day.

(2) Class II: Systems with a design capacity more than 300,000 gallons per day, but less than or equal to two (2) million gallons per day.

(3) Class III: Systems with a design capacity more than two (2) million gallons per day, but less than or equal to seven and one-half (7 1/2) million gallons per day.

(4) Class IV: Systems with a design capacity in excess of seven and one-half (7 1/2) million gallons per day.

An industrial certification is available for operators of pretreatment facilities. However, operators of such facilities are not required to obtain this or any other form of certification.

Section 10. Classification of Wastewater System Operators. Five (5) classes of operators are hereby established and shall range from Class I through Class IV plus Limited. Each operator classification is intended to relate directly to the corresponding classification of wastewater system. In addition, there is hereby established an industrial classification for operators of facilities for pretreating wastewater prior to discharge into municipal sewers.

Section 11. Operator Qualifications: Experience, Education and Equivalencies. (1) Operators shall be examined by the board or cabinet as to education, experience, and knowledge as related to the classification of wastewater systems for which examined. Applicants may be required further to give evidence of good moral character, dependability, initiative, interest in his/her work, and other pertinent characteristics in relation to operation of the class of wastewater system for which certification is being applied.

(2) Experience and educational requirements of operators shall be as follows:

(a) Class I and industrial.

1. Completion of high school or equivalent; and

2. One (1) year of acceptable operation of applicable wastewater system.

(b) Class II.

1. Completion of high school or equivalent; and

2. Two (2) years of acceptable operation of applicable wastewater system of Class I or higher.

(c) Class III.

1. Completion of high school or equivalent; and

2. Three (3) years of acceptable operation of applicable wastewater system of Class II or higher.

(d) Class IV.

1. A baccalaureate degree in a standard curriculum in engineering, allied sciences or equivalent; and

2. At least five (5) years of acceptable operation of applicable wastewater system of Class III or higher.

(3) In evaluating qualifications of operators and experience/educational equivalencies the board shall be guided by the following:

(a) In order to establish how much experience will be accepted, the board must determine whether the work performed required some technical knowledge of the work and whether or not responsible charge of work was included. In wastewater systems, where responsibility is divided, supervisors of important divisions may be credited with having responsible charge. Experience accumulated under an industrial certificate will be equivalent to Class I. No experience credit will be allowed for operation under a limited certificate.

(b) Experience, to be acceptable, must be the result of satisfactory accomplishment of work. Evaluation may be based on reports of the cabinet or other agencies having appropriate responsibilities for supervising wastewater systems.

(c) Partial credit may be given for operating experience in maintenance laboratories or other work of wastewater systems and allied trades such as plumbing.

(d) Where applicable, education may be substituted for a portion of experience requirements as specified below:

1. One (1) year of college work (limited to approved curricula in environmental engineering, environmental technology or related scientific fields) may be considered as equivalent to a maximum of two (2) years of experience or one (1) year of experience with responsible charge.

2. Where education is substituted for experience it shall not exceed an amount which would reduce the requirements of actual operating experience to less than six (6) months for Class I or less than one (1) year for Class II or two (2) years for Class III or three (3) years for Class IV.

3. Education applied to the experience requirement cannot also be applied to the education requirement.

(e) Where applicable, experience may be substituted for education requirements as specified below:

1. One (1) year of experience may be considered as equivalent to a maximum of one (1) year of high school. Four (4) years of board-approved experience may be considered equivalent to a high school degree.

2. Each year of responsible charge or two (2) years experience in an important phase of operation, other than responsible charge, will be considered equivalent to one (1) year of college. Four (4) years of responsible change approved by the board or eight (8) years of other board-approved experience may be considered equivalent to a baccalaureate degree.

3. Experience applied to educational requirements may not also be applied to the experience requirement.

(f) Substitutions for formal education may be as follows:

1. Training credits (T.C.) for board approved operators training schools, seminars and technical courses may be substituted for high school and college requirements. One (1) year of college work equals thirty (30) semester hours or forty-five (45) quarter hours. Six (6) classroom hours of board approved courses shall equal one (1) T.C., and forty-five (45) T.C. equals eighteen (18) semester hours of college or one (1) year of high school.

2. An acceptable high school equivalency certificate may be used to substitute for graduation from high school.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Hearing)

401 KAR 5:085. KPDES discharge permit and variance fees.

RELATES TO: KRS 224.020, 224.033, 224.034, 224.060, 224.073
STATUTORY AUTHORITY: KRS 224.033, 224.045
NECESSITY AND FUNCTION: This regulation defines the assessment of fees applicable to the issuance of discharge permits and variances. This regulation establishes permit and variance requirements in addition to those requirements of 401 KAR 5:005, 5:031, 5:045, 5:055, 5:060, 5:065, 5:070, 5:075, and 5:080 as are necessary to implement the fee schedule established herein.

Section 1. Applicability. The provisions of this regulation shall apply to the owner or operator of each source required by 401 KAR 5:060, Section 1 to have a permit except for publicly owned sources and sources permitted under a general permit issued under 401 KAR 5:055, Section 5.

Section 2. Definitions. The following definitions described terms used in this regulation. Terms not further defined in this regulation have the meaning given by KRS 224.005 or, if not defined, the meaning attributed by common use.

(1) "Agriculture operation" means operations that use confined feeding in livestock or livestock-by-product production with manure handling facilities that qualify as concentrated animal feeding operations in accordance with 401 KAR 5:050.

(2) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(3) "Intermediate nonpublicly owned treatment works" means facilities which discharge a design flow rate of between 10,000 gallons per day and 49,999 gallons per day wastewater containing only conventional pollutants and which are not eligible for funding under United States Environmental Protection Agency's construction grants program, CWA Section 205(g) (33 U.S.C. Section 1285(g)), as implemented by 40 CFR Parts 30, 33, and 35.

(4) "Large nonpublicly owned treatment works" means facilities which discharge a design flow rate greater than or equal to 50,000 gallons per day of wastewater containing only conventional pollutants and which are not eligible for

funding under United States Environmental Protection Agency's construction grants program, CWA Section 205(g) (33 U.S.C. Section 1285(g)), as implemented by 40 CFR Parts 30, 33, and 35.

(5) "Major industry" means industries that generate and discharge process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. These industries discharge a design flow rate greater than or equal to 50,000 gallons per day of process wastewater containing conventional, nonconventional, or thermal pollutants. A "major industry" designation, as defined in this regulation, is not a criteria for classification as a major facility, as defined in 401 KAR 5:050, Section 1.

(6) "Minor industry" means industries that generate and discharge process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. These industries discharge a design flow rate less than 50,000 gallons per day of process wastewater containing conventional, nonconventional, or thermal pollutants. If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a "major industry."

(7) "Nonconventional pollutant" means all pollutants not considered to be a conventional pollutant as defined in this regulation and including priority pollutants identified in 401 KAR 5:060, Section 13.

(8) "Nonprocess industry" means industries that generate and discharge only nonprocess wastewater while engaged in commercial activities including manufacturing, resource recovery, products distributions, and wholesale and retail trade. These industries discharge nonprocess wastewater, for example, noncontact cooling or stockpile run-off, and discharge wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal to or greater than the ninety-six (96) hour lethal concentration (LC) for fifty (50) percent mortality (ninety-six (96) hr. LC 50) for a representative indigenous aquatic organism. If any of the above conditions is not met, then the discharge is considered to be a "minor industry."

(9) "Publicly owned treatment works (POTW)" for the purpose of this regulation shall be those facilities as defined in 401 KAR 5:050, Section 1, and which are eligible for funding under United States Environmental Protection Agency's construction grants program, CWA Section 205(g) (33 U.S.C. Section 1285(g)), as implemented by 40 CFR Parts 30, 33, and 35.

(10) "Small nonpublicly owned treatment works" means facilities which discharge a design flow rate less than 10,000 gallons per day of wastewater containing only conventional pollutants and which are not eligible for funding under United States Environmental Protection Agency's construction grants program, CWA Section 205(g) (33 U.S.C. Section 1285(g)), as implemented by 40 CFR Parts 30, 33 and 35.

(11) "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

Section 3. Filing Fees. (1) Any owner or operator who submits an application for a permit to discharge from a wastewater treatment unit will be assessed a filing fee in the amount of twenty (20) percent of the base fee in Section 4(2)(a) of this regulation.

(2) Any owner or operator who submits an application for a variance will include with the application a filing fee in the amount of the base fee in Section 6(2)(a) of this regulation.

(3) A filing fee is not refundable if a discharge permit or variance application to which it is related is denied or withdrawn.

(4) The filing fee will be applied toward the discharge permit or variance fee assessed respectively in Sections 4 and 6 of this regulation.

Section 4. Discharge Permit Fees. (1)(a) Every owner or operator who is issued a discharge permit shall be assessed a discharge permit fee in accordance with the provisions set forth in subsection (2) of this section.

(b) Upon making the determination that the discharge permit can be issued, under 401 KAR 5:075, Section 11, the cabinet will notify the applicant and send a bill for the discharge permit fee. The discharge permit will be issued by the cabinet upon receipt of the total amount of the permit fee less the filing fee. Failure by the applicant to pay the assessed permit fee on or before the due date shall result in the forfeiture of the filing fee and denial of the permit.

(c) Facilities which fall into multiple categories as specified in Section 2 of this regulation shall be assessed the highest fee.

(2) Each discharge permit fee will be determined by adding the base fee in paragraph (a) of this subsection to all other applicable component fees listed in paragraph (b) of this subsection.

(a) Base fee. The base fee for a discharge permit for any point source water pollutant shall depend on the type of wastewater treatment unit or facility and the required permit action. The amount of the base fee will be assessed according to the following schedule:

Facility Category	First Issuance and Renewals New and Existing Facilities
Major industry	$3,200 [1600]
Minor industry	2,000 [1200]
Nonprocess industry	1,000 [450]
Large non-POTW	1,700 [1100]
Intermediate non-POTW	1,500 [650]
Small non-POTW	1,000 [350]
Agriculture	1,200 [200]
Surface mining operation	1,200 [350]

(b) Component fees. The component fee for each addition necessary to complete the evaluation of the discharge permit shall be as follows:

1. Fees for major modifications of permits will be prorated based on the life of the permit in accordance with subsection (3) of this section.

2. Public hearing and CWA Section 301 (33 U.S.C Section 1311) technology-based variances - $325.

(3) The provisions of this section will apply with respect to fees for temporary discharge permits except that the fee as determined by subsection (2) of this section will be

multiplied by the ratio of the length of time covered by the temporary discharge permit to five (5) years.

(4) The provisions of this section shall apply to permit applications submitted on or after October 1, 1988. Permit applications which are submitted by October 1, 1988 shall be subject to this section as in effect on December 10, 1985.

Section 5. Duplicate Discharge Permit Fee. Upon application for the issuance of a duplicate discharge permit, the duplicate permit shall be issued by the cabinet upon receipt of a fifteen (15) dollar fee.

Section 6. Water Quality Variance Fee. (1) Any owner or operator granted a variance by the cabinet shall be assessed a variance fee. Upon determining that the variance can be granted, the cabinet shall notify the applicant and send a bill for the variance fee. Failure by the applicant to pay the variance fee on or before the due date shall result in the forfeiture of the filing fee and denial of the variance. The variance shall be granted by the cabinet upon receipt of the total amount of the variance fee less the filing fee.

(2) Variance fees shall be determined by adding the base fee in paragraph (a) of this subsection with the component fee, if applicable, listed in paragraph (b) of this subsection.

(a) Base fee. The base fee for a variance for any point source water pollutant shall be equal to $270, the cost of reviewing the feasibility of the variance request and reviewing the applicant's plan of study for the hydrologic-water quality investigation, assessment, or appraisal.

(b) Component fee. The component fee for completing an evaluation of a variance request shall be equal to $690, the cost of a technical review of the study data, results, and conclusions, and for making the variance recommendation.

Section 7. Terms of Payment. (1) Payment of a discharge permit or variance fee, and a duplicate discharge permit fee, as the case may be, will be made within thirty (30) days of the billing date.

(2) Payment of a filing fee shall accompany the application for a discharge permit or variance.

(3) With respect to all fees assessed in Sections 3, 4, 5, and 6 of this regulation, payment, if mailed, should be sent by certified mail. Certified checks or money orders, if used, shall be payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 7, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

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

401 KAR 6:015. Public and semipublic water supplies.

RELATES TO: KRS Chapter 224
STATUTORY AUTHORITY: KRS 224.032(3), (4), (5), (6)
NECESSITY AND FUNCTION: The Cabinet is directed by the aforementioned statutory provision to promulgate regulations applicable to all public and semipublic water supply systems operating within the Commonwealth of Kentucky. By accepting primary enforcement responsibility for the Federal Safe Drinking Water Act (P.L. 93-523, 42 U.S.C. Section 300f et seq.) the Commonwealth agrees to adopt and enforce the provisions of that Act. This regulation therefore establishes the standards and safeguards necessary and relative to the planning, operation and maintenance of public and semipublic water supply systems for the protection of public health.

Section 1. Definitions. (1) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or his authorized representative.

(2) "Auxiliary intake" means any piping connection or other device whereby raw (untreated) water may be secured from a location or source other than the intake which is normally used.

(3) "Bypass" means a physical arrangement whereby water may be diverted around any feature of the purification process of a public or semipublic water supply.

(4) "Contaminant" means any physical, chemical, biological, or radiological substance or any other similar matter in water.

(5) "Cross-connection" means any physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water and the other being either water of unknown or questionable safety, or steam, gas or chemicals, whereby there may be flow from one (1) system to the other, the direction of flow depending on the pressure differential between the two (2) systems.

(6) "Cabinet" means the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, or its successor.

(7) "Division" means the Division of Water.

(8) "Ground water source" means any source of water for a public or semipublic water supply that does not have a free water surface exposed to the atmosphere but excluding wells which have consistently demonstrated a variation in turbidity content exceeding the acceptable levels for potable water contained in these regulations.

(9) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except

those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

(10) "Person" means any individual, firm, corporation, officer or employee thereof, water association, water district, public institution, municipality, county, partnership, company, governmental agency, club, organization of any kind, any political subdivision of the Commonwealth of Kentucky or any federal agency with the exception of Indian reservations.

(11) "Potable water" means any water which meets the provisions of this regulation, the quality of which is approved by the cabinet for human consumption.

(12) "Private water supply" means a residential water supply located on private property under the control of a person holding a possessory interest in the property, the use of which supply is limited to family members.

(13) "Public water system" means any system owned by any person, for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year, and includes any collection, treatment, storage or distribution facility under control of the operator of such system and used primarily in connection with such system and any collection or pretreatment storage facility not under such control used primarily in connection with such system. A public water system is either a "community water system" or a "noncommunity water system."

(a) "Community water system" means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(b) "Noncommunity water system" means a public water system which serves at least fifteen (15) service connections used by persons for a period less than year-round or which serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year but less than year-round.

(14) "Sanitary survey" means an on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

(15) "Semipublic water supply" means any water supply made available for drinking or domestic use which serves more than three (3) families but does not qualify as a public water system.

(16) "Standard methods" means the latest edition of "Standard Methods for the Examination of Water and Wastewater" prepared and jointly published by APHA, AWWA and WPCF, herein filed by reference. This publication is printed and distributed by the Publication Office, American Public Health Association, 1015 Eighteenth Street, N.W., Washington, D.C. 20036.

(17) "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(18) "Supplier of water" means any person who owns or operates a public water system.

(19) "Surface water source" includes, but is not limited to, ponds, reservoirs, streams of all sizes, free flowing springs, wells with variable turbidity due to the characteristics of the raw water, or any source of water supply for a public water system that has a free water surface exposed to the atmosphere.

(20) "Water supply system" means the source of supply and all structures and appurtenances used for the collection, treatment, storage and distribution of water for a public or semipublic water supply.

(21) "Water treatment plant" or "purification plant" means that portion of the water supply system which is designed to alter either the physical, chemical or bacteriological quality of the water.

(22) "Professional engineer" means an engineer with current registration as a professional engineer in Kentucky.

(23) "Turbidity" means the presence of suspended particulates including, but not limited to, sand, silt, clay, finely divided organic or inorganic matter, plankton or other microscopic organisms or elements which optically interfere with the clarity of liquids.

(24) "Corrosivity" means the tendency of water to form or dissolve calcium carbonate as a film or scale.

(25) Definitions relating to trihalomethane surveillance are included in Section 9 [8] of this regulation.

Section 2. General Provisions. (1) Water systems covered. Except where otherwise provided, this regulation applies to each public water system. This regulation shall not apply to a public water system which consists only of distribution and storage facilities which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply, which is not a carrier in interstate commerce and which does not sell water to any person.

(2) Operation and responsibility. No person shall operate or commence operation of a public or semipublic water supply except in compliance with the provisions of this regulation. However, water supply systems constructed prior to the effective date of this regulation may be continued in use provided the operation, maintenance, bacteriological, chemical, physical and radiological standards comply with these requirements, or such system obtain a variance or exemption from those standards with which it does not comply.

(3) Operator certification.

(a) Each public water system shall be operated under the supervision of an individual holding a current Kentucky operators certificate for at least the class of system supervised. Certified operators are required for the operation of treatment facilities and systems having only distribution facilities. In the event the operator is not physically present while a plant is operating, he must be immediately available.

(b) Certified operators are not required for semipublic water systems.

(4) "Boil water" notice. In the event the maximum allowable bacterial level as specified in these regulations is exceeded, the cabinet may issue a public notice that water provided by a system is unfit for human consumption unless first boiled.

(a) When directed by the cabinet, boil water notices shall be issued when the bacteriological maximum contaminant level (MCL) has been exceeded as confirmed by analyses made in a

certified laboratory.

(b) The "boil water" notice shall be released through newspapers, radio, television or any media having an immediate public impact. As a health and safety measure, the selected media shall be used to repeat the notification during the period of imminent danger at intervals which shall maintain public awareness. The notice shall be readily understood and include instructions for the public and a summary of the steps the public water system is taking to correct the problem. Boiling instructions shall caution to only boil drinking water for short range use by boiling water for at least five (5) minutes.

(c) A public water system may issue a boil water notice in the absence of a state notice.

(d) Consumer "advisory." At the cabinet's discretion, when conditions within a public water system indicate a possible adverse health effect from consumption of the water distributed by a system, an advisory may be issued. The advisory will inform affected persons of all actions which should be taken.

(5) Cross-connections prohibited. All cross-connections are hereby prohibited. The use of automatic devices such as reduced pressure zone backflow preventers and siphon breakers may be approved by the cabinet in lieu of proper air gap separation under specific regulated conditions as a means of protecting the water supply system. A combination of air gap separation and automatic devices shall be required where determined by the cabinet to be necessary because of the degree of hazard to public health. It shall be the responsibility of the management of every public water supply (PWS) to determine with the most cost-effective approach whether or where cross-connections exist and to take the necessary steps to immediately eliminate them.

(6) Bypasses prohibited. No bypass shall be created or maintained without the written approval of the cabinet.

(7) Auxiliary intakes prohibited. No auxiliary intake shall be used in direct connection with a public or semipublic water supply system except during a period of emergency and only after the written approval of the cabinet.

(8) Sewer and water connections. The sanitary sewer serving the purification plant and auxiliary facilities, including all plumbing fixtures, toilets, showers, drinking fountains and floor drains shall discharge to the public sewer system where available. Where no such sewer is available, the connection shall be made to a suitable sewage disposal facility. There shall be no direct physical connection between the sewer system and any filter backwash, filter-to-waste drains or clearwell overflow lines. A suitable air gap must be provided between such drains and overflow lines and the approved sanitary, storm sewer, or natural drainage system as to preclude possibility of back-up of sewage or waste into the drain or overflow lines.

(9) Disinfection of water supply. All public and semipublic water supplies shall provide continuous, automatic disinfection by chlorination and shall provide a minimum free chlorine residual of two-tenths (0.2) milligrams per liter (or ppm) at all points throughout the distribution system. A contact period of at least thirty (30) minutes shall be provided between the chlorine and the water to allow adequate time for disinfection. Disinfecting agents other than chlorine may be approved by the cabinet provided reliable feeding equipment is available and testing procedures for a residual are recognized in "Standard Methods." Free chlorine residuals shall be checked daily at representative points throughout the system and reported monthly pursuant to Section 13 [12](1) of this regulation.

(10) Disinfection of new, repaired or extended distribution systems. All new water distribution systems, including storage distribution tanks and repaired portions of, or all extensions to, existing systems, shall be thoroughly disinfected before being placed in service by the use of chlorine or chlorine compounds in such amounts as to produce a concentration of at least fifty (50) ppm and a residual of at least twenty-five (25) ppm at the end of twenty-four (24) hours and followed by thorough flushing. New water distribution lines shall not be placed into service until the proper number of representative bacteriological samples taken at the points specified in paragraph (a) of this subsection are examined and are shown to be negative following disinfection. Other methods of disinfection shall have the written approval of the cabinet.

(a) Bacteriological samples shall be submitted for each new construction project, routine repair, replacement or extensions to existing systems after the disinfection and flushing. A core zone which includes up to the first one-half (1/2) mile shall be established. Two (2) samples shall be taken from the core zone. Additionally, one (1) sample per mile for each mile of new distribution line shall be submitted. New or routine replacement lines shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses. Sample bottles shall be clearly identified as "special" construction tests. Notification of analytical results shall be given to the division by the most expedient methods. Written approval of the cabinet is required for other disinfection methods.

(b) When emergency repairs due to breaks or ruptures in distribution system lines are required, public water systems may suspend bacteriological sampling provided appropriate and thorough flushing safeguards, with a chlorine residual present, are taken.

(11) Substances which may have deleterious physiological effect, or for which physiological effects are not known, shall not be introduced into the water supply system in a manner which could permit them to reach the consumer.

(12) Certified laboratories. For the purpose of determining compliance with this regulation, samples may be considered only if they have been analyzed by a laboratory certified by the cabinet or the cabinet's authorized agent except that measurements for turbidity and free chlorine residual may be performed by any person acceptable to the cabinet.

(a) The authorized agent shall be a certification officer qualified in the field of microbiology, chemistry or radiological substances or one (1) individual qualified in all three (3) fields and duly accredited by the U.S. Environmental Protection Agency's designated Environmental Monitoring and Support Laboratory Administrator or his duly appointed staff members.

(b) The cabinet's certification officer shall

grant "interim" or "provisional" certification pursuant to the U.S. Environmental Protection Agency's guidelines stipulated in "The Criteria and Procedures for Interim Certification of Laboratories Involved in Analysis of Public Water Supplies" EPA-670/9-75-006, August, 1975, or the most recent revision thereof.

(c) On-site inspections (audits) for recertification will be made on a biannual basis, effective October 1, 1982, unless a special audit is required by receipt of a written request for additional parameter certification or if, in the cabinet's determination, a certified laboratory has failed to maintain proper methodology, physical or instrumental capabilities or qualified personnel.

(d) Methodology for the detection of contaminants or contaminant groups are stipulated in the current edition of "Standard Methods for the Examination of Water and Wastewater;" "Methods of Chemical Analysis of Water and Wastewater;" EPA Monitoring and Support Laboratory, Cincinnati, Ohio; Radiological Techniques as set forth in 41 Federal Register 28402 (July 9, 1976); "Gas Chromatographic Methods for Analysis of Organic Substances in Water," USGS, Book 5; or alternative methods approved by the U.S. EPA in 40 CFR part 141, as amended.

(13) Monitoring of consecutive public water systems. When a public water system supplies water to one or more other public water systems, the cabinet may modify the monitoring requirements imposed by this regulation to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(14) Guidance. The cabinet shall provide information on design criteria upon request.

(15) The cabinet may enter, during normal business hours pursuant to KRS 224.033(10), any establishment, facility or other property of such supplier in order to determine whether such supplier has acted or is acting in compliance with any applicable law or regulation which the cabinet has the authority to enforce. Such entry may include collection of water samples for laboratory analyses, inspection of records, files, papers, processes, controls and facilities required to be kept, installed or used under the provision of these regulations. The cabinet or its authorized agent may cause to be tested any feature of a public water system including its raw water source to determine compliance with applicable legal requirements.

Section 3. Design, Construction and Approval of New Facilities. (1) Preliminary plans. When any supplier or potential supplier of water plans to undertake the construction of a new water treatment plant or expand an existing one in any way, preliminary plans shall be submitted to the cabinet before any financial commitment is made or any construction initiated. An applicant shall demonstrate to the cabinet evidence of efforts to avoid locating part or all of the new or expanded facility at a site which is subject to a significant risk from earthquakes, floods, fires or other disasters which could cause a breakdown of the public water system or a portion thereof. Except for the intake structure, the facility shall be out of the 100-year flood plain.

(2) Preliminary information. The following information shall be submitted to the cabinet by a professional engineer on behalf of the applicant:

(a) A statement as to the name and owner of the plant;

(b) USGS Quadrangle map which shows where the site of the proposed facility is located;

(c) The proposed source of water and quantity available with the location of the intake or wellhead identified by latitude and longitude in degrees, minutes and seconds;

(d) A chemical and bacteriological analysis of the water from the proposed source by a laboratory certified by the cabinet or its authorized agent;

(e) A description of the proposed facility including size, flow rate through filters, settling basin size, and other general criteria;

(f) Operation plan including anticipated load, hours of operation, area served and name of plant operator.

(3) Preliminary plans approval. Upon receipt and review of the preliminary plans as set forth in subsection (1) of this section, the cabinet will either approve the preliminary plans or return them to the supplier or water for revision. Approval of the preliminary plans signifies approval only of the concept described in the preliminary plans and does not alter in any way the responsibility of the supplier of water to submit complete plans and specifications to the cabinet for final approval. The facility shall be designed in compliance with the approved preliminary plans. Any change in the final design from the concept set forth in the preliminary plans shall be approved prior to its incorporation in the final plans and specifications.

(4) Preliminary plans for semipublic treatment facilities or distribution systems. Preliminary plans are not required by the cabinet for semipublic treatment facilities or for distribution system construction, extensions or improvements.

(5) Final plans and specifications, water treatment plants and distribution facilities:

(a) Plans and specifications for all public water supplies shall be prepared and submitted to the cabinet by a professional engineer and shall bear his seal. The seal of a professional engineer is not required on plans and specifications for semipublic water supplies. The construction or installation of any new facilities or works or the alteration or reconstruction of any new facilities or works in any public or semipublic water supply shall not begin until plans and specifications, or any changes thereto together with design data as may be required for proper review of the plans, have first been submitted in four (4) copies to the cabinet and have been approved by the cabinet in writing. Plans and specifications, reports and other information shall be submitted in such form and content as may be specified by the cabinet, and shall be submitted at least thirty (30) days prior to the date on which action is requested of the cabinet. The front page of the plans shall contain the name of the water supply, its ownership, location by city and county, and the name of the person preparing the plans.

(b) The cabinet review of plans is limited to sanitary features of design and other features of public health significance and does not include the examination of structural, mechanical or electrical design or economic

factors.

(c) The plans shall be drawn to scale and accompanied by proper specifications so as to permit a comprehensive engineering review and shall include but not be limited to the following:

1. A plan and sectional view with all necessary dimensions of the water treatment facilities;

2. A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system; and

3. Specifications containing details on all treatment equipment, including catalog identification of pumps, chlorinators, chemical feeders and related equipment.

(6) Approval of final plans. When approved, one (1) set of plans and specifications stamped "approved" shall be returned to the engineer or person who prepared the plans and specifications.

(7) Construction:

(a) During construction a set of approved plans and specifications shall be available at the job site at all times. All work shall be done in accordance with the approved plans and specifications.

(b) If the cabinet's representative observes work being done in a manner which does not conform to the "approved" plans and specifications, the cabinet shall notify the owner in writing of any noncompliance.

(8) Final approval of facility. Upon completion of the construction, the person who presented the plans shall certify in writing that the project has been completed in accordance with the "approved" plans and specifications.

(9) Expiration of approval. Unless construction is begun within one (1) year from date of approval, the approval shall expire. Extension of approval may be granted upon written request to the cabinet.

Section 4. Fees. (1) Fees for the review of plans and specifications for new and existing public and semipublic water supplies.

(2) Filing fees.

(a) Except as provided in KRS 224.033(20), any person who submits plans and specifications required by Section 3 of this regulation shall be assessed a filing fee in the amount of twenty (20) percent of the required fee described in subsection (3)(b) of this section.

(b) A filing fee is not refundable if the plans and specifications to which the filing fee is related are denied or withdrawn.

(c) The filing fee will be applied toward the project fee assessed in subsection (3)(b) of this section.

(d) Plans and specifications denied approval will be returned to the applicant. Further consideration of such plans and specifications will require a new submittal with appropriate filing fee(s).

(3) Project fees.

(a) Following preliminary review of the plans and specifications, the applicant will be notified if the plans and specifications are acceptable and advised to submit the remainder of the fee(s) required by paragraph (b) of this subsection.

(b) Fees for review and approval of plans and specifications required by Section 3 of this regulation will be assessed according to the following schedule:

1. Community public water supplies.

a. A water treatment plant utilizing coagulation, disinfection, filtration, and sedimentation (all treatment components, complete treatment) - $775.

b. A water treatment plant utilizing at least disinfection and other treatment component(s) but less than complete treatment - $500.

c. A water treatment plant utilizing only disinfection - $250.

d. A change in design capacity of a water treatment plant involving coagulation, disinfection, filtration, and sedimentation (all treatment components, complete treatment) - $775.

e. A change in design capacity of a water treatment plant involving disinfection and other treatment component(s) but less than complete treatment - $500.

f. A change in design capacity of a water treatment plant involving only disinfection - $100.

g. A change, other than to a water treatment plant, in the structures and appurtenances, except for distribution lines of less than 10,000 feet, of a water supply system - $325.

h. A change to the distribution lines of 10,000 feet or less of a water supply system - $150.

2. Noncommunity public water supplies.

a. A water treatment plant utilizing coagulation, disinfection, infiltration, and sedimentation (all treatment components, complete treatment) - $750.

b. A water supply system serving more than 100 people but not providing complete treatment - $200.

c. A change to a water supply system serving more than 100 people - $100.

d. A water supply system serving 100 people or less but not providing complete treatment - $100.

e. A change to a water supply system serving 100 people or less - $50.

3. Semipublic water supplies. A semipublic water supply facility or a change to a semipublic water supply - $50.

(4) With respect to the fees assessed in this regulation, payment shall be by certified check or money order payable to the Kentucky State Treasurer.

(5) The provisions of this section shall apply to complete plans and specifications submitted on or after October 1, 1988 and to submitted plans and specifications which are not completed by October 1, 1988. Plans and specifications which are submitted complete by October 1, 1988 shall be subject to no fee.

Section 5. [4.] Bacteriological Sampling, Analytical Techniques and Maximum Contaminant Levels. (1) Who must perform bacteriological sampling. All suppliers of water operating a public water system, semipublic water systems, suppliers who produce water and suppliers who purchase water from others are subject to the provisions of this section. Persons operating private water supplies are not subject to the sampling and analytical provisions set forth herein.

(2) Sampling frequency, public water systems:

(a) Sampling frequency for all public water systems. Suppliers of water for all public water systems shall collect samples to be analyzed for total coliform bacteria per 100 milliliters. Coliform density samples shall be taken at

regular time intervals and in numbers proportionate to the population served by the system. In no event shall the frequency be less than as set forth following:

MINIMUM NUMBER OF SAMPLES PER MONTH

Population Served	Minimum Number Samples	Population Served	Minimum Number Samples
25 - 2,500	2	37,001 - 41,000	45
2,501 - 3,300	3	41,001 - 46,000	50
3,301 - 4,100	4	46,001 - 50,000	55
4,101 - 4,900	5	50,001 - 54,000	60
4,901 - 5,800	6	54,001 - 59,000	65
5,801 - 6,700	7	59,001 - 64,000	70
6,701 - 7,600	8	64,001 - 70,000	75
7,601 - 8,500	9	70,001 - 76,000	80
8,501 - 9,400	10	76,001 - 83,000	85
9,401 - 10,300	11	83,001 - 90,000	90
10,301 - 11,100	12	90,001 - 96,000	95
11,101 - 12,000	13	96,001 - 111,000	100
12,001 - 12,900	14	111,001 - 130,000	110
12,901 - 13,700	15	130,001 - 160,000	120
13,701 - 14,600	16	160,001 - 190,000	130
14,601 - 15,500	17	190,001 - 220,000	140
15,501 - 16,300	18	220,001 - 250,000	150
16,301 - 17,200	19	250,001 - 290,000	160
17,201 - 18,100	20	290,001 - 320,000	170
18,101 - 18,900	21	320,001 - 360,000	180
18,901 - 19,800	22	360,001 - 410,000	190
19,801 - 20,700	23	410,001 - 450,000	200
20,701 - 21,500	24	450,001 - 500,000	210
21,501 - 22,300	25	500,001 - 550,000	220
22,301 - 23,200	26	550,001 - 600,000	230
23,201 - 24,000	27	600,001 - 660,000	240
24,001 - 24,900	28	660,001 - 720,000	250
24,901 - 25,000	29	720,001 - 780,000	260
25,001 - 28,000	30	780,001 - 840,000	270
28,001 - 33,000	35	840,001 - 910,000	280
33,001 - 37,000	40	910,001 - 970,000	290
		970,001 - 1,050,000	300

(b) Population served calculation. For purposes of determining the population served to determine sampling frequency, the applicable method below shall be used:

1. When the supplier of water serves an area defined by an official census count or a population projection, the most recent census count or official population projection shall be used; or

2. Where no official figures on population are available on the area served by a supplier of water, the population served shall be considered to be a factor of not less than three and three-tenths (3.3) times the number of residential connections or a factor of not less than three (3) times the total number of all connections, which ever is greater.

(3) Sampling frequency for semipublic water suppliers. Samples of water from semipublic water systems shall be tested, for the purpose of determining coliform density, at least twice per month.

(4) Sampling scheduling. The time at which each public and semipublic water supplier shall take routine samples for the purpose of determining coliform density shall be scheduled by the cabinet. A noncommunity water system shall sample for total coliform bacteria per 100 milliliter twice each month of operation and seasonally operated facilities shall notify the cabinet in writing in advance as to the opening and closing dates covered by such sampling requirements. This frequency may be changed by the cabinet on the basis of subsequent surveys and conditions.

(5) Forwarding samples. The cabinet will, upon request, notify any water supplier of those certified commercial or state laboratories to which samples may be sent for coliform density analysis. The samples shall be forwarded to a certified laboratory by the most expeditious or speedy method available to the water supply.

(6) Sampling points. Samples taken for coliform analysis shall be taken at representative points throughout the water distribution system. Different sampling points shall be designated by the water supply including remote points in the distribution system. When the sample is collected, the free chlorine residual shall be determined and recorded on the form provided with the sample container.

(7) Sample collection, public water systems. The bacteriological samples for public water systems shall be collected by the agency responsible for the distribution of water in bottles prepared and sterilized in accordance with "Standard Methods." The water sample shall be free of any disinfecting agent at the time of its collection. The bacteriological samples collected by a distributor of water for analysis in its own certified laboratory may use containers other than bottles if approved, in writing, by the cabinet.

(8) Analytical techniques for bacteriological contamination. The analysis for the determination of bacteriological contamination shall be determined by either the membrane filter technique or the multiple tube fermentation technique (MPN procedure). The analysis shall be conducted in accordance with "Standard Methods" except that a standard sample size shall be employed. The standard sample used in the membrane filter procedure shall be 100 milliliters. The standard sample used in the five (5) tube most probable number (MPN) procedure (fermentation tube method) shall be five (5) times the standard portion. The standard portion is either ten (10) milliliters or 100 milliliters as described herein.

(9) Maximum bacteriological contaminant level, membrane filter technique. When the membrane filter technique is used, the number of coliform bacteria shall not exceed any of the following:

(a) One (1) per 100 milliliters as the arithmetic mean of all samples examined per month pursuant to subsection (2)(a) of this section, except that, at the division's discretion, systems required to take ten (10) or fewer samples per month may be authorized to modify this requirement and exclude one (1) positive routine sample per month from the monthly calculation if:

1. As approved on a month-to-month basis the cabinet determines and notifies the public water system that no unreasonable risk to health would exist under the conditions of this modification. A notification may be based on, but is not limited to, the following:

a. The system provides and maintains an active disinfectant residual in the distribution system;

b. The potential for contamination as indicated by a sanitary survey; and

c. The history of water quality at the public water system including, but not limited to, MCL or monitoring violations;

2. The supplier initiates a check sample on each of two (2) consecutive days from the same sampling point within twenty-four (24) hours after notification that the routine sample is positive, and each check sample is negative; and

3. The original positive routine sample is reported and recorded by the supplier pursuant to Sections 13 [12](2) and 14 [13](4) of this regulation. The supplier shall report to the cabinet its compliance with the conditions specified in this paragraph and a summary of the corrective action taken to correct the prior positive sample result. If a positive routine sample is not used for the monthly calculation, another routine sample must be analyzed for compliance purposes. This provision may be used only once during two (2) consecutive compliance periods.

(b) Four (4) per 100 milliliters in more than one (1) sample when less than twenty (20) are examined per month.

(c) Four (4) per 100 milliliters in more than five (5) percent of the samples when twenty (20) or more are examined per month.

(10) Maximum bacteriological contaminant level, multiple tube fermentation technique (MPN procedure).

(a) Ten (10) milliliter standard tube. When the fermentation tube method and ten (10) milliliter standard tube are used, coliform bacteria shall not be present in any of the following: more than ten (10) percent of the tubes in any month pursuant to subsection (2)(a) of this section, except that, at the cabinet's discretion, systems required to take twenty (20) or fewer samples per month may be authorized to exclude one (1) positive routine sample resulting in one (1) or more positive tubes per month from the monthly calculation if:

1. As approved on a case-by-case basis the cabinet determines and notifies the public water system in writing that no unreasonable risk to health existed under the conditions of this modification. A notification may be based on, but not limited to, the following:

a. The system provides and maintains an active disinfectant residual in the distribution system;

b. The potential for contamination as indicated by a sanitary survey; and

c. The history of the water quality at the public water system (e.g., MCL or monitoring violations);

2. The supplier initiates a check sample on each of two (2) consecutive days from the sampling point within twenty-four (24) hours after notification that the routine sample is positive, and each check sample is negative;

3. The original positive routine sample is reported and recorded by the supplier pursuant to Sections 13 [12](2) and 14 [13](4) of this regulation; the supplier reports to the cabinet its compliance with the conditions specified in this paragraph and reports the action taken to correct the prior positive sample result; if a positive routine sample is not used for the monthly calculation, another routine sample is analyzed for compliance purposes; and this provision is used only once during two (2) consecutive compliance periods;

4. Three (3) or more tubes in more than one (1) sample when less than twenty (20) samples are examined per month; or

5. Three (3) or more tubes in more than five (5) percent of the samples when twenty (20) or more samples are examined per month, or three (3) or more tubes in more than one (1) sample when less than twenty (20) samples are examined per month; or three (3) or more tubes in more than five (5) percent of the samples when twenty (20) or more samples are examined per month.

(b) 100 milliliter standard sample. When the fermentation tube method and 100 milliliter standard samples are used, coliform bacteria shall not be present in any of the following: more than sixty (60) percent of the tubes in any month; or, five (5) tubes in more than one (1) sample when less than five (5) samples are examined per month; or, five (5) tubes in more than twenty (20) percent of the samples when five (5) or more samples are examined per month.

(11) Small system compliance period. For public water systems that are required to sample at a rate of less than four (4) per month, and semipublic systems, compliance with subsections (9) and (10) of this section shall be based upon sampling during a three (3) month period, except that, at the discretion of the cabinet compliance may be based upon sampling during a one (1) month period because of public safety.

(12) Bacteriological check sampling. The following check sampling levels are established:

(a) Membrane filter technique. When coliform bacteria occur in a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet until the results obtained from at least two (2) consecutive check samples show less than one (1) coliform bacterium per 100 milliliters.

(b) Multiple tube fermentation technique:

1. Ten (10) milliliter tubes. When coliform bacteria occur in three (3) or more ten (10) milliliter tubes of a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet until the results obtained from at least two (2) consecutive check samples show no positive tubes.

2. 100 milliliter tube. When coliform bacteria occur in all five (5) of the 100 milliliter tubes of a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet until the results obtained from at least two (2) consecutive daily check samples show no positive tubes.

(13) Check sample locations. The location at which the check samples were taken pursuant to subsection (12) of this section shall not be eliminated from future sampling without written approval of the cabinet. The results from all coliform bacterial analyses performed pursuant to this subpart, except those obtained from check samples and special purpose samples, shall be used to determine compliance with the maximum contaminant level for coliform bacteria. Check samples shall not be included in calculating the total number of samples taken each month to determine compliance.

(14) Check sample reporting. When the presence of coliform bacteria in water taken from a particular sampling point has been confirmed by any check samples examined as directed in subsection (12) of this section, the supplier of

water shall report that to the division within forty-eight (48) hours.

(15) When a maximum contaminant level set forth in subsection (9) or (10) of this section is exceeded, the supplier of water shall report that to the division and notify the public as prescribed in Section 12 [11] of this regulation. The cabinet may conduct an on-site inspection to assist the operator in determining the cause of the contamination and issue an order which includes a reasonable time period during which all causes of the contamination shall be corrected.

(16) Special purpose samples. Special purpose samples, such as those taken to determine whether disinfection practices following pipe placement, replacement, or repair have been sufficient, shall not be used to determine compliance with subsection (2)(a), (9), or (10) of this section.

Section 6. [5.] Turbidity Sampling, Analytical Techniques and Maximum Contaminant Levels. (1) Who must sample for turbidity. All producers of water for public water systems who use surface water sources in whole or in part and those groundwater sources which demonstrate a variable turbidity are subject to the provisions set forth in this section. Systems that purchase water from other systems or obtain their water from turbidity free groundwater sources or semipublic systems are not subject to these provisions.

(2) Sampling frequency. Samples for the determination of turbidity shall be taken one (1) each day at the producing facility except as otherwise provided in this regulation. Turbidity level determinations shall be made within one (1) hour after sample collection.

(3) Sampling point. Samples for the determination of turbidity shall be taken at a representative entry point to the distribution system. Where water is produced by more than one (1) treatment plant for a single system, each plant shall be considered a separate sampling point.

(4) Maximum turbidity limit. The maximum contaminant level for turbidity is one (1) turbidity unit (TU) as determined by a monthly average of daily samples or five (5) turbidity units based on an average of two (2) consecutive days.

(5) Measurement technique. The measurement for turbidity shall be by the Nephelometric Method as set forth in "Standard Methods," or an alternate method approved in writing by the cabinet.

(6) Excessive turbidity. If the maximum allowable limit has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as practicable but not later than one (1) hour thereafter. If the repeat sample exceeds the maximum allowable limit, the supplier shall report that to the division within forty-eight (48) hours. The repeat sample shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples exceeds the maximum allowable limit, or if the average of two (2) samples taken on consecutive days exceeds five (5) TU, the supplier of water shall report that to the division and notify the public as directed in Section 12 [11] of this regulation.

(7) Exceptions. Up to five (5) turbidity units may be allowed if the supplier of water can demonstrate to the cabinet that the higher turbidity does not do any of the following:

(a) Interfere with disinfection;

(b) Prevent maintaining an effective disinfectant agent throughout the distribution system; or

(c) Interfere with microbiological determinations.

Section 7. [6.] Inorganic Chemical Sampling, Analytical Techniques and Maximum Contaminant Levels. (1) Who must sample for inorganic chemicals. All producers of water for public water systems shall sample for the presence of inorganic chemicals. Systems that purchase all of their water from another system or semipublic systems are not required to sample for inorganic chemicals.

(2) Sampling frequency:

(a) Community water systems, surface source. All community water systems utilizing surface water sources shall sample for the presence of inorganic chemicals each year, with the first sampling completed by June 24, 1978.

(b) Community water systems, groundwater source. All community water systems utilizing groundwater as a source of supply shall sample for the presence of inorganic chemicals each three (3) years with the initial sampling completed by June 24, 1979.

(c) All noncommunity water systems. All noncommunity water systems shall sample once each three (3) years with the initial sampling completed by June 24, 1979. The only inorganic chemical for which noncommunity water systems must sample is nitrates.

(3) Sampling point. The sampling point for the determination of inorganic chemicals shall be at any free flowing outlet of the distribution system.

(4) Maximum inorganic chemical limits (except fluoride):

(a) The following are the maximum contaminant levels for inorganic chemicals other than fluoride:

Contaminant	Level, milligrams per liter
Arsenic	0.05
Barium	1.
Cadmium	0.010
Chromium	0.05
Lead	0.05
Mercury	0.002
Nitrate (as N)	10.
Selenium	0.01
Silver	0.05

(b) The maximum contaminant level for nitrate is applicable to all public water systems. The levels for the other inorganic chemicals apply only to community water systems.

(5) Fluoridation.

(a) Maximum fluoride concentration. When the annual average of the maximum daily air temperatures for the location in which the community water system is situated is the following, the maximum contaminant levels for fluoride are:

Temperature Degrees Fahrenheit	Degrees Celsius	Level, milligrams per liter
53.7 and below	12.0 and below	2.4
53.8 to 58.3	12.1 to 14.6	2.2
58.4 to 63.8	14.7 to 17.6	2.0
63.9 to 70.6	17.7 to 21.4	1.8
70.7 to 79.2	21.5 to 26.2	1.6
79.3 to 90.5	26.3 to 32.5	1.4

(b) The maximum limit for fluoride is applicable to community water systems only.

(c) Fluoridation of public water supplies is covered by 401 KAR 6:020.

(6) Measurement technique. Measurement for inorganic chemicals shall be done in accordance with the techniques mutually approved by the Administrator and the division.

(7) Inorganic chemical limit exceeded (except nitrate):

(a) If the level of any contaminant listed in subsection (4) or (5) of this section (except nitrate) exceeds the maximum contaminant level, the supplier of water shall report to the cabinet within seven (7) days and initiate three (3) additional analyses at the same sampling point within one (1) month.

(b) When the average of the routine sample that exceeds the maximum limit together with the three (3) additional samples as set forth above rounded to the same number of significant figures as the maximum contaminant level for the substance in question exceeds the maximum contaminant level, the supplier of water shall notify the cabinet and give notice to the public as prescribed in Section 12 [11] of this regulation. Monitoring by the suppliers after public notification shall be at a frequency designated by the cabinet and shall continue until the maximum contaminant level has not been exceeded in two (2) successive samples or until a monitoring schedule as a condition to a variance, exemption or enforcement action is effective.

(8) Nitrate limit exceeded. The maximum contaminant level for nitrate shall be determined on the basis of the mean of two (2) analyses. When a level exceeding the maximum contaminant level for nitrate is found, a second analysis shall be initiated within twenty-four (24) hours, and if the mean average of the two (2) analyses exceeds the maximum contaminant level, the supplier of water shall report this to the cabinet and shall notify the public as prescribed in Section 12 [11] of this regulation.

(a) Nitrate levels not exceeding twenty (20) mg/l may be allowed in a noncommunity water system if:

1. No water from the system is or will be available to children under six (6) months of age; and

2. There will be continuous posting that nitrate levels exceed ten (10) mg/l and the potential health effects of exposure; and

3. Local and state public health authorities are notified annually of nitrate levels that exceed ten (10) mg/l; and

4. No adverse health effects shall result.

(b) Where the state allows levels of nitrate up to twenty (20) mg/l, public notification will be required when the MCL exceeds twenty (20) mg/l.

(9) Prior sampling accepted. Surface water data acquired since June 24, 1976 and ground water data acquired since June 24, 1974 may be substituted for the initial analyses required by this section at the discretion of the cabinet.

Section 8. [7.] Organic Chemical Sampling, Analytical Techniques and Maximum Contaminant Levels. (1) Who must sample for organic chemicals. A community water system that obtains all or part of its water from surface water sources shall sample for organic chemicals and is subject to the provisions of this section. The cabinet may require a community water system which obtains its water from any groundwater source to sample for organic chemicals.

(2) Sampling frequency. Sampling for organic chemicals shall be done no less than once each three (3) years at a period of the year specified by the cabinet, with the initial sampling completed by June 24, 1978.

(3) Sampling points. The sampling point for the determination of organic chemicals shall be at any free flowing outlet of the distribution system.

(4) Maximum organic chemical limits. The following are the maximum contaminant levels for organic chemicals.

	Level, milligrams per liter
Chlorinated hydrocarbons:	
Endrin (1,2,3,4,10, 10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa hydro-1,4-endo, endo-5,8 - dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachloro-cyclohexane, gamma isomer).	0.004
Methoxychlor (1,1,1-Trichloro-2, 2 - bis (p-methoxyphenyl) ethane).	0.1
Toxaphene (C10H10C18-Technical Chlorinated Camphene, 67-69 percent chlorine).	0.005
Chlorophenoxys:	
2,4 - D, (2,4-Dichlorophenoxyacetic acid).	0.1
2,4,5-TP Silvex (2,4,5-Trichloro-phenoxypropionic acid).	0.01

(5) Measurement technique. Measurement for the determination of the chlorinated hydrocarbon group shall be made in accordance with "Methods for Organic Chlorine Pesticides in Industrial Effluents." Measurement for the determination of the chlorophenoxy group shall be in accordance with the "Methods for Chlorinated Phenoxy Acid Herbicides in Industrial Effluents." Both methods are found in the publication from the Method Development and Quality Assurance Laboratory, Environmental Protection Agency, Cincinnati, Ohio, dated November 28, 1973. Other methods may be mutually approved by the administrator and the division.

(6) Organic chemical limit exceed.

(a) If the results of an analysis for the organic chemicals listed above show that the maximum limits have been exceeded, the supplier of water shall report this information to the cabinet within seven (7) days and initiate three additional analyses within one (1) month.

(b) When the average of the four (4) analyses made above rounded to the same number of significant figures as the maximum contaminant level for the substance in question exceeds the maximum contaminant level, the supplier of water

shall report that to the Cabinet's Division of Water and give notice to the public as specified in Section 12 [11] of this regulation. Monitoring after public notification shall be at a frequency determined by the cabinet and shall continue until the maximum contaminant level has not been exceeded in two (2) successive samples or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(7) Prior sampling accepted. For the initial analysis required in this section, data for surface water acquired within one (1) year prior to June 24, 1977 and data for ground water acquired within three (3) years prior to June 24, 1977 may be substituted at the discretion of the cabinet.

Section 9. [8.] Trihalomethanes. (1) Definitions. The following definitions are applicable to this section:

(a) "Trihalomethane (THM)" means one (1) family of organohalogen compounds resulting from the displacement of three (3) of the four (4) hydrogen atoms in methane with chlorine, bromine, or iodine atoms in the molecular structure.

(b) "Total trihalomethanes (TTHMs)" means the arithmetic sum of the concentrations in milligrams per liter of the THM compounds (trichloromethane, dibromochloromethane, bromodichloromethane, and tribromomethane) rounded to two (2) significant figures.

(c) "Maximum total trihalomethane potential (MTP)" means the maximum concentration of TTHMs produced in a given water containing excess free chlorine residuals after seven (7) days retention at a temperature of twenty-five (25) degrees Centigrade (seventy-seven (77) degrees Fahrenheit) or above.

(d) "Disinfection" means the use of chlorine and free chlorine residuals. The use of chloramines, chlorine dioxide and ozone shall be acceptable substitutes for the purpose of eliminating formation of trihalomethanes, with prior approval by the division.

(2) Who must sample for trihalomethanes. Each community public water system serving 10,000 or more persons that adds a disinfectant as part of its treatment process shall monitor for trihalomethanes. The cabinet shall provide technical assistance in sampling and sample analysis for trihalomethanes. Consecutive community water systems, where there is a seller and one (1) or more purchasers of water and the combined population of the systems involved exceeds 10,000 or more persons, shall be required to sample for trihalomethanes pursuant to Section 2(13) of this regulation as follows:

(a) When a buyer does not practice booster disinfection or alter the water in any way, the seller shall be responsible for monitoring. Sampling shall be done pursuant to subsection (4)(c) of this section wherein the buyer's distribution system shall reflect the longest period of retention.

(b) If a buyer practices booster disinfection or alters the water in any way, monitoring shall be the responsibility of the buyer and sampling shall be done pursuant to subsection (4) of this section. The raw water sample shall be taken at the point of entry into the system of the buyer and ahead of the booster chlorination point.

(c) Any system determined by the division to be the major contributor to excesses in violation of maximum contaminant levels for total trihalomethanes shall notify the public as provided in Section 12 [11] of this regulation.

(3) Sampling frequency. Systems serving 75,000 or more persons are required to have completed one (1) year of sampling and analysis for trihalomethanes on a quarterly basis by November 29, 1981. Systems serving more than 10,000 persons but less than 75,000 persons shall initiate quarterly monitoring by November 29, 1982 and have one (1) year of sampling and analysis completed by November 29, 1983.

(4) Sampling points. Samples shall be taken from a free flowing tap within the distribution system of the supplier on the following basis:

(a) One (1) untreated or raw water sample to determine interference factors.

(b) Three (3) samples shall be taken at points in the distribution system which reflect normal average daily usage or turnover.

(c) One (1) sample shall be taken in the system which reflects the longest time period of retention within the distribution system but shall not be taken on a dead-end.

(d) All samples taken quarterly shall be taken in the same week and at the same designated sample points during each quarter.

(e) The minimum number of samples required for each system shall depend upon the number of treatment plants in the system. Each system shall collect four (4) samples from the distribution system per quarter for each treatment plant. One (1) raw water control sample shall be taken from each plant intake per quarter.

(f) In multiple plant operations, sampling shall reflect the distribution from each plant.

(5) Maximum trihalomethane limits.

(a) The maximum contaminant level for total trihalomethanes is one-tenth (0.10) milligrams per liter (mg/l).

(b) The results of all analyses performed each quarter shall be averaged and reported in a format supplied by the cabinet. All samples collected shall be used in computing the average, unless the analytical results are invalidated for technical reasons by the division.

(c) Compliance will be determined on a running annual average of the most recent four (4) quarterly samples.

(6) Reduction in sampling frequency. Upon receipt of a written request and at the discretion of the cabinet, the requirement of a sampling frequency of four (4) samples per quarter per year for each treatment plant used by the system may be reduced by a minimum of one (1) sample for TTHMs per quarter per year. Such reduction in frequency may only be considered after one (1) full year of monitoring in accordance with the original schedule if it has been demonstrated that the water delivered to consumers has been below the TTHM MCL of one-tenth (0.10) mg/l. The minimum single sample for TTHM shall then be taken at a point in the distribution system that reflects maximum residence time. If a minimum single sample per quarter exceeds the MCL for TTHM and is confirmed by at least one (1) check sample the system shall comply with the four (4) samples per quarter sampling frequency for one (1) year before reduced frequency may again be requested. Significant changes in the water source or treatment program may be grounds for requiring a four (4) per quarter schedule of sampling

analysis.

(7) Increase in sampling frequency. If quarterly sampling analytical results show a TTHM arithmetic sum above acceptable limits the cabinet may place the system on a monthly monitoring schedule until acceptable levels are achieved for three (3) consecutive months.

(8) Sampling and measurement techniques.

(a) Sampling and analyses made pursuant to this section shall be conducted according to one (1) of the following approved methods:

1. "The Analysis of Trihalomethanes in Drinking Waters by the Purge and Trap Method," Method 501.1 EMSL, EPA, Cincinnati, Ohio.

2. "The Analysis of Trihalomethanes in Drinking Water by Liquid/Liquid Extraction," Method 501.2, EMSL, EPA, Cincinnati, Ohio.

(b) Samples for TTHM shall be dechlorinated upon collection to prevent further production of THMs according to the procedures described in the foregoing two (2) methods. Sample for maximum TTHM potential shall not be dechlorinated and shall be held for seven (7) days at twenty-five (25) degrees Centigrade or above prior to analysis.

(c) The cabinet will accept only analytical data from laboratories which have participated in the U.S. EPA performance evaluation program and which have been certified jointly by the cabinet's designated official and the EPA.

(9) Total trihalomethane levels exceeded. If the average annual TTHM level is exceeded the community water system shall notify the public as set forth in Section 12 [11] of this regulation.

(10) Requirements for making significant treatment modifications. Before a system makes any significant modification in its existing treatment process to achieve compliance with this regulation, the system shall obtain cabinet approval of a detailed plan for such modification. Any plan to modify a disinfection practice shall require the system, at a minimum, to:

(a) Evaluate the water system for sanitary defects and evaluate the source water for bacteriological quality;

(b) Evaluate its existing treatment practices and consider improvements which shall minimize disinfectant demand and optimize finished water quality throughout the distribution system;

(c) Provide baseline data from water quality surveys of the distribution system. Such data shall include the results from monitoring for:

1. Total coliform and fecal coliform bacteria;
2. Fecal streptococci;
3. Standard plate counts at thirty-five (35) degrees Centigrade and twenty (20) degrees Centigrade;
4. Phosphate;
5. Ammonia nitrogen;
6. Total organic carbon.

(d) Provide additional similar monitoring to assure continued maintenance of optimal bacteriological quality in finished water after unit treatment or disinfection modifications are made.

(e) Demonstrate an active disinfectant residual throughout the distribution system at all times during and after the modification.

(f) Provide additional monitoring for chlorate, chlorite and chlorine dioxide which shall be required when chlorine dioxide is used as a disinfectant.

(11) Prior sampling accepted. Trihalomethane sampling analyses completed since November 1, 1980 shall be accepted as part of the initial surveillance scheduling requirements of the cabinet.

(12) Self-monitoring reporting requirements. All laboratories performing monitoring and TTHM analyses for drinking water systems shall hold a valid certification. Results shall be submitted to the cabinet, on a form provided by the cabinet, within thirty (30) days after completion.

(13) Variance procedures for total trihalomethanes.

(a) Applications for a variance from the maximum acceptable contaminant level (MCL) of one-tenth (0.10) mg/l will be considered by the cabinet when the public water system making application presents evidence that:

1. The best treatment technology, treatment techniques or other means generally available for achieving compliance with the MCL are not available.

2. The best treatment method is not technically appropriate or technically feasible for that system.

3. Only marginal reduction in TTHM levels would be realized.

(b) The following technology, treatment techniques or other generally available means for achieving compliance with the MCL for total trihalomethanes are considered as the best available:

1. The use of chloramines as an alternate or supplemental disinfectant or oxidant;

2. Use of chlorine dioxide as an alternate or supplemental disinfectant or oxidant;

3. Improved clarification for THM precursor reduction;

4. Moving the point of chlorination to reduce TTHM formation and, where necessary, substituting for the use of chlorine as a preoxidant chloramines, chlorine dioxide or potassium permanganate; and

5. Use of powdered activated carbon for THM precursor or TTHM reduction seasonally or intermittently at dosages not to exceed ten (10) mg/l on an annual average basis.

(c) The cabinet, upon making a finding that information submitted by the applicant system supports a decision that best treatment technology or techniques is not available, shall consider a variance under the following conditions:

1. Granting the variance will not result in an unreasonable risk to health.

2. Prescribes within one (1) year of the date the variance is granted a schedule for:

a. Implementation by the public water system of such quality control measures as the cabinet may require during the period ending on the date compliance with such requirement is established;

b. Increments of progress as related to examination of the technological, economic and reduction feasibility of one (1) or more of the following treatment methods:

(i) Introduction of off-line water storage for THM precursor reduction;

(ii) Aeration for TTHM reduction, where geographically and environmentally appropriate;

(iii) Introduction of clarification where not currently practiced;

(iv) Consideration of alternate sources of raw water; or

(v) Use of ozone as an alternate or supplement disinfectant or oxidant.

(d) In no event shall the cabinet require a system to install or use a treatment method not described in subsection (13)(b) or (c)2b of this section to obtain or maintain a variance from the TTHM rule or in connection with any variance compliance schedule.

Section 10. [9.] Radionuclides. (1) Definitions. The following definitions are applicable to this section:

(a) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(b) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system.

(c) "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(d) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(e) "Manmade beta particle and photon emitters" means all radionuclides emitting beta particles and photons listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

(f) "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(2) Who must sample for radionuclides. All producers of water for community water systems shall sample for radionuclides. Community water systems who purchase all of their water from others are not required to sample for radionuclides. The division shall provide technical assistance in sampling and sample analysis for radionuclides.

(3) Sampling frequency. Sampling for radionuclides shall be on a schedule determined by the division but in no event shall it be less than once each four (4) years for community water systems.

(4) Sampling points. Samples shall be taken from a free flowing tap within the distribution system of the supplier. When a community water system is supplied by two (2) or more sources having different concentrations of radioactivity, samples shall be taken at each source.

(5) Maximum radionuclides limits:

(a) Radium 226, radium 228 and Gross Alpha particle radioactivity. The following are the maximum contaminant levels for radium-226, radium-228, and gross alpha particle radioactivity:

1. Combined radium-226 and radium-228 - 5pCi/l.

2. Gross alpha particle activity (including radium-226 but excluding radon and uranium) - 15 pCi/l.

(b) Beta particle and photon radioactivity from manmade radionuclides. The average annual concentration of beta particle and photon radioactivity from manmade radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than four (4) millirem/year. The following are the average annual concentrations assumed to produce a total body or organ dose of four (4) mrem/year:

Radionuclide	Organ	pCi per liter (pCi/l)
Tritium	Total body	20,000
Strontium-90	Bone marrow	8

Except for the radionuclides listed, the concentration of manmade radionuclides causing four (4) mrem/year total body or organ dose equivalents shall be calculated on the basis of a two (2) liter per day drinking water intake using the 168 hour data listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 69 as amended August 1963, U. S. Department of Commerce. If two (2) or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four (4) millirem/year.

(6) Sampling and measurement technique. Sampling and measurement shall be in accordance with procedures set forth in Federal Register 28402 (July 9, 1976) Section 141.25 and 141.26 which may be obtained through the division.

(7) Radionuclides limit exceeded. If the average annual maximum contaminant level for radionuclides is exceeded, the supplier of a community water system shall give notice to the cabinet and notify the public as set forth in Section 12 [11] of this regulation. Monitoring at quarterly intervals for gross alpha particle activity, radium 226 and radium 228 and at monthly intervals for manmade radioactivity, depending on which limit is exceeded, shall be continued until the annual average concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(8) Prior sampling accepted. Radionuclide sample analysis completed since July 24, 1976 may be substituted for the initial analysis at the discretion of the cabinet.

Section 11. [10.] Variances and Exemptions. (1) Variances:

(a) Requirements for a variance. The cabinet may grant variances to the maximum contaminant levels in this regulation upon a finding that:

1. Because of characteristics of the raw water sources which are reasonably available to the systems, the system cannot meet the applicable maximum contaminant levels despite application of the best technology, treatment techniques, or other means, which are generally available; and

2. The granting of a variance will not result in an unreasonable risk to the health of any person. A variance may also be granted from the provisions of this regulation or the policy of the cabinet concerning treatment techniques of an applicable primary drinking water regulation if the public water system applying for the variance has demonstrated that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system.

(b) Variance request. A supplier of water may request a variance by submitting a written

request to the cabinet. The request shall contain all the information and data concerning the variance request that is required by the cabinet. The request shall include a proposed compliance schedule and a statement that the system shall perform monitoring and other reasonable requirements prescribed by the cabinet as a condition to the variance.

(c) Consideration of variance request:

1. In its consideration of a variance request the cabinet shall consider such factors as the availability and effectiveness of treatment techniques, cost, and other economic considerations such as the cost of implementing other treatment techniques, improving source water quality, or using an alternate source.

2. In considering a variance request to a required treatment technique the cabinet shall consider such factors as the quality of the water source and source protection measures provided by the water system.

(2) Exemptions:

(a) Requirements for an exemption. The cabinet may exempt any public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable primary drinking water standard upon a finding that due to compelling factors, which may include economic factors, the public water system is unable to comply with such contaminant level or treatment technique requirement or the public water system was in operation on the effective date of such contaminant level or treatment technique requirement and the granting of the exemption will not result in an unreasonable risk to health.

(b) Exemption request. A supplier of water may request an exemption from these regulations by submitting a written request for exemption to the cabinet. The request shall contain all the information and data concerning the exemption request that is required by the cabinet. The request shall include a proposed compliance schedule and relevant analytical results of water quality sampling, including results of relevant tests conducted pursuant to this regulation, and an explanation of the factors such as time or economic factors which prevent such system from achieving compliance.

(c) Consideration of an exemption request. In its consideration of an exemption request the cabinet may consider such factors as construction, installation or modification of treatment equipment or systems; the time needed to put into operation a new treatment facility to replace an existing system which is not in compliance; and economic feasibility of compliance.

(3) Disposition of a variance or exemption request. The cabinet will act on any variance or exemption request submitted within ninety (90) days of receipt of the request, or as soon as possible thereafter.

(a) Variance or exemption denied. If the cabinet decides to deny the application for a variance or exemption, it will notify the applicant of its intention to issue a denial. Such notice will include a statement of reasons for the proposed denial and will offer the applicant an opportunity to present, within thirty (30) days of receipt of the notice, additional information or argument to the cabinet. The cabinet will make a final determination on the request within thirty (30) days after receiving any such additional information or argument. If no additional information or argument is submitted by the applicant, the application shall be denied.

(b) Variance or exemption granted:

1. If the cabinet proposes to grant a variance or exemption, it will notify the applicant of its decision in writing. Such notice will identify the variance or exemption, the facility covered, conditions under which the variance or exemption may be terminated, and will specify the proposed termination date of the variance or exemption, unless otherwise terminated.

2. No variance or exemption shall be effective until the opportunity is provided for a public hearing on the proposed variance or exemption.

(4) Public hearing.

(a) Before a variance, exemption or a schedule proposed by the cabinet may take effect, the cabinet shall provide adequate notice and opportunity for a public hearing on the variance, exemption or proposed schedule. Public notice of the opportunity shall be in a manner consistent with the current applicable regulation of the U.S. Environmental Protection Agency, and shall, in general, follow the procedures set forth in Section 12 [11] of this regulation.

(b) Requests for hearing may be submitted by any interested person to the cabinet within thirty (30) days after issuance of the public notices provided for above, and shall include the following:

1. The name, address, and telephone number of the individual, organization or other entity requesting a hearing;

2. A brief statement of the interest of the person making the request in the proposed schedule and of information that the requesting person intends to submit at such hearing; and

3. The signature of the individual making the request, or the signature of a responsible official of the requesting organization or other entity.

(c) A hearing convened pursuant to this section shall be conducted before a hearing officer designated by the cabinet in accordance with the rules and procedures of the cabinet.

(d) Within thirty (30) days after the termination of the public hearing the cabinet shall, taking into consideration information obtained during such hearing and other relevant information, confirm, revise or rescind the proposed variance, exemption or schedule.

(e) The variance, exemption or schedule shall become effective thirty (30) days after the notice of opportunity for a hearing is given if no request for a hearing is submitted within this period and the cabinet does not determine to hold a public hearing on its own motion.

(5) Revised compliance schedule. When a variance or exemption has been granted the cabinet shall impose such interim control measures as are necessary and shall issue within one (1) year after the variance or exemption is granted a "proposed" schedule for compliance with this regulation. A public hearing shall be held pursuant to the proposed schedule in accordance with the provisions of this section. Within thirty (30) days after the termination of the public hearing the cabinet shall, taking into consideration information obtained during such hearing, revise the proposed schedule as necessary and prescribe the final schedule for compliance and interim measures for the public

water system granted a variance or exemption. The schedule shall be in conformance with the current requirements of the U. S. Environmental Protection Agency applicable to this schedule.

(6) Termination of a variance or exemption. Any variance or exemption granted by the cabinet from this regulation shall be terminated at the earliest of the following dates:

(a) The termination date specified at the time the variance or exemption was issued;

(b) At the time the system comes into compliance with this regulation;

(c) At the time the cabinet determines that the system has failed to comply with the finalized schedule;

(d) Upon a finding by the cabinet that the raw water source requires a the specified treatment technique to protect the health of persons served (applicable to a variance only); and

(e) A finding that the water system has failed to comply with monitoring and other requirements prescribed by the cabinet as a condition to the granting of the variance (applicable to a variance only).

Section 12. [11.] Public Notification. (1) Contaminant level exceeded, community water system. If a community water system fails to comply with an applicable maximum contaminant level as set forth in this regulation, fails to comply with applicable monitoring and analytical requirements, is granted a variance or exemption from an applicable maximum contaminant level, or fails to comply with the requirements of any schedule prescribed pursuant to a variance or exemption, the supplier of water shall notify persons served by the system of the failure or grant by:

(a) Including a notice to this effect in the first set of water bills after such failure, variance or exemption, and in any event by written notice within three (3) months. Such notice shall be repeated at least once every three (3) months so long as the system's failure continues or variance or exemption remains in effect. If the system issues water bills less frequently than quarterly, or does not issue water bills, the notice shall be made by or supplemented by another form of direct mail;

(b) If a community water system has failed to comply with an applicable maximum contaminant level, the supplier of water shall notify the public of such failure, in addition to the notification required by paragraph (a) of this section as follows:

1. Publication on not less than three (3) consecutive days in a newspaper or newspapers of general circulation in the area served by the system. Such notice shall be completed within fourteen (14) days after the supplier of water learns of the failure; and

2. Furnishing a copy of the notice to the radio and television stations, excluding commercial television, serving the area served by the system. Such notice shall be furnished within seven (7) days after the supplier of water learns of the failure.

3. The requirements of subsection (1)(b) of this section may be waived by the cabinet if it determines that the violation has been corrected promptly after discovery, the cause of the violation has been eliminated, and there is no longer a risk to public health.

4. If the area is not served by a daily newspaper of general circulation, notification by newspaper shall instead be given by publication on three (3) consecutive weeks in a weekly newspaper of general circulation serving the area. If no weekly or daily newspaper of general circulation serves the area, notice shall be given by posting the notice in post offices within the area served by the system.

(2) Reports to the cabinet. Any community water system giving public notice pursuant to subsection (1) of this section shall file the following with the cabinet.

(a) A copy of the notice that was included in the water bills or other direct mailing shall be mailed to the cabinet on the same day that this notice was sent to the water system customers together with an affidavit signed by the chief executive officer of the system stating that the copy of the notice was sent to all customers. This procedure shall be repeated at each mailing of the notice as prescribed in subsection (1)(a) of this section.

(b) A copy of the complete page of the newspaper or newspapers in which the notice was published together with an affidavit from the publisher stating the dates on which the notice was published.

(c) A copy of the notice read over the radio or television station together with an affidavit from the station stating the times this announcement was made.

(d) If notice of the failure is given under the provision of subsection (1)(b)4 of this section, an affidavit from the county judge executive of the county in which the system is located that the notice was posted as prescribed in this regulation.

(3) Noncommunity water system violations. If a noncommunity water system fails to comply with an applicable maximum contaminant level fails to comply with an applicable testing procedure, is granted a variance or an exemption from an applicable maximum contaminant level, fails to comply with the requirement of any schedule prescribed pursuant to a variance or exemption or fails to perform any monitoring required, the supplier of water shall give notices by continuous posting of such failure, variance or exemption to the persons served by the system as long as the failure, variance or exemption continues. The form and manner of such notice shall be prescribed by the cabinet, and shall insure that the persons using the system are adequately informed of the failure, variance or exemption.

(4) Form and content of public notices. The public notices given under this section shall be conspicuous and written in a manner to fully inform the users of the system. The notice shall be readable in language and print size and clearly disclose to the population served by the system all relevant facts. The notice shall include any action the public should take as a result of the failure, variance or exemption, and a summary of the steps the system is taking to correct the problem.

(5) Notice to the public required by this section may be given by the cabinet on behalf of the supplier of water.

(6) Where notification by mail is required by subsection (1)(a) of this section but notification by newspaper or to radio or television stations is not required by subsection (1)(b) of this section, the cabinet may order the supplier of water to provide notification by newspaper and by radio and

television stations when circumstances make more immediate or broader notice appropriate to protect the public health.

Section 13. [12.] Reports and Records. (1) Monthly reports. The operator of each public water system shall file reports with the cabinet indicating the monthly operational information. These reports shall be on forms provided by the cabinet or approved by it and shall be received at the division no later than ten (10) days after the end of the month for which the report is filed.

(2) Special reports. The supplier of water shall report to the cabinet within forty-eight (48) hours the failure to comply with any drinking water regulations, contained herein including the failure to comply with monitoring requirements.

(3) Analysis in state laboratories. the supplier of water is not required to report analytical results to the cabinet where a state laboratory performs the analyses and reports the results to the cabinet which would normally receive such notification directly from the laboratory.

Section 14. [13.] Record Maintenance. (1) Who shall keep records. All owners or operators of public water and semipublic water systems shall keep on the premises or at a convenient location near the premises the records set forth in this section.

(2) Data summaries. Actual laboratory reports may be kept, or data may be transferred to tabular summary, provided that the following information is included:

(a) The date, place, and time of sampling, and the name of the person who collected the sample;

(b) Whether the sample was a routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;

(c) Date of analyses;

(d) Laboratory and person responsible for performing analyses;

(e) The analytical technique/method used; and

(f) The results of the analyses.

(3) Availability. The records required by this section shall be public records as defined in KRS 61.870 to 61.884.

(4) Bacteriological analyses. Records of bacteriological analyses shall be kept at least five (5) years.

(5) Chemical analyses. Records of chemical analyses shall be kept for a period of ten (10) years.

(6) Turbidity analyses. Records of turbidity analyses shall be kept for a period of at least one (1) year.

(7) Records of violations. Records of action taken by the system to correct violation of primary drinking water regulations shall be kept not less than ten (10) years after the last action taken with respect to the particular violation involved.

(8) Records of sanitary surveys. Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system, by a private consultant, or by any local, state or federal agency, shall be kept not less than ten (10) years after completion of the sanitary survey involved, at which time they may be transferred to the cabinet.

(9) Records of variances or exemptions. Records concerning a variance or exemption granted to the system shall be kept not less than five (5) years following the expiration of such variance or exemption.

Section 15. [14.] Other Contaminants. (1) Definition of "other contaminants." The contaminants listed in this section do not, in general, have a direct impact on the health of consumers but their presence in excessive quantities may discourage the utilization of drinking water and discredit the supplier. The maximum limits for these contaminants are commonly referred to as "secondary standards" and are enforced as the other contaminants standards set forth in this regulation, except that the provisions of Sections 11 and 12 [10 and 11] of this regulation do not apply.

(2) Who must sample for "other contaminants." All suppliers of water for public and semipublic drinking water systems shall sample for "other contaminants" at the direction of the cabinet.

(3) New sources of water. An analysis for these contaminants shall be made when a new source of water supply is proposed to the cabinet for preliminary approval. Excessive amounts of these contaminants or excessive costs of their removal may be grounds for rejection of the proposed source of water.

(4) Existing sources of water. Existing producers of water shall sample for and make analysis for the "other contaminants" listed in this section at the frequency prescribed by the cabinet. Treatment shall be adequate to assure that the "other contaminant" level does not exceed the concentration limit set forth in this regulation.

(5) Sampling point. Sample may be taken from a free flowing tap in the distribution system, except hydrogen sulfide (H2S) shall be measured at the entry point to the distribution system.

(6) "Other Contaminant" maximum levels. The following lists the maximum allowable levels of "other contaminants:"

Chemical Symbol	Name	Unit(2)	Maximum Level
Cl	Chloride	mg/l	250.0
-	Color(1)	Platinum Cobalt	15.0
Cu	Copper	mg/l	1.0
-	Corrosivity	-	Noncorrosive
H_2S	Hydrogen Sulfide	mg/l	0.05
Fe	Iron	mg/l	0.3
Mn	Manganese	mg/l	0.05
-	Odor(1)	Threshold Number	3.0
-	Phenols	mg/l	0.001
SO_4	Sulfate	mg/l	250.0
Zn	Zinc	mg/l	5.0
TDS	Total Dissolved Solids	mg/l	500.0

(1) Surface supplies only
(2) Milligrams per liter (mg/l) is the same as parts per million (ppm)

(7) Sample collection and measurement technique. Samples shall be taken and analyzed in accordance with methods set forth in "Standard Methods."

(8) "Other contaminants" maximum limits

exceeded. If the "other contaminants" limit as set forth herein is exceeded by a supplier of water, the cabinet may direct that supplier to modify the treatment procedure or to locate a more suitable source of water.

Section 16. [15.] Special Monitoring for Sodium. (1) Who must sample for sodium. Suppliers of water for community public water systems shall collect and analyze one (1) sample per plant at the entry point of the distribution system for the determination of sodium concentration levels.

(2) Sampling frequency.

(a) Community water systems, surface source. Systems utilizing surface water sources in whole or in part shall collect and analyze samples semiannually. Samples shall be collected one (1) time during the wet season and one (1) time during the dry season during a calendar year. The first sampling period shall be completed by March 27, 1983.

(b) Community water systems, groundwater sources. Systems utilizing solely groundwater sources shall collect and analyze samples annually. The first sampling period shall be completed by March 27, 1983.

(c) Samples required. The minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system, except the cabinet may consider that multiple wells drawing raw water from a single aquifer to be one (1) treatment plant for determining the minimum numbers of samples. The supplier of water may be required to collect and analyze water samples for sodium more frequently in locations where the sodium content is variable.

(d) Prior analyses accepted. For initial analysis required in this section, data for community water supplies acquired two (2) years prior to March 27, 1983 may be substituted at the discretion of the cabinet.

(e) Analyses for sodium shall be performed by the flame photometric method in accordance with the procedures described in "Standard Methods for the Examination of Water and Wastewater," 14th Edition, pp. 250-253; or by Method 273.1, Atomic Absorption - Direct Aspiration or Method 273.2, Atomic Absorption - Graphite Furnace, in "Methods for Chemical Analysis of Water and Waste," EMSL, Cincinnati, EPA, 1979; or by Method D1428-64(a) in Annual Book of ASTM Standards, part 31, Water.

(3) Reporting. The supplier of water shall report to the cabinet the results of the analyses for sodium within ten (10) days of the end of the month in which the sample results were received or within ten (10) days following the end of the required monitoring period as determined by the cabinet, whichever of these is first. If more than annual sampling is required the supplier shall report the average sodium concentration within ten (10) days of the end of the month in which the analytical results of the last sample used for the annual average was received.

(4) Acceptable sodium limits. A level of twenty (20) mg/l of sodium shall be considered as an optimum for drinking water. The supplier of water shall notify appropriate local and state public health officials of the sodium levels by written notice within three (3) months. A copy of each notice required to be provided by this paragraph shall be sent to EPA and the state within ten (10) days of its issuance. The supplier of water is not required to notify appropriate local and state public health officials of the sodium levels where the state provides such notices in lieu of the supplier.

(5) Public notification. The provisions of Section 11 of this regulation do not apply to sodium levels unless the water supplier opts to do so voluntarily.

Section 17. [16.] Special Monitoring for Corrosion. (1) Who must monitor for corrosivity. Each community water system which utilizes surface water sources or groundwater sources shall identify specific types of corrosivity-related characteristics within their water distributed for human, domestic or industrial consumption.

(2) Sampling frequency. The supplier shall collect two (2) samples, or more at the request of the division, for analysis from each plant using any surface water source. One (1) sample shall be collected during midwinter and one (1) sample shall be collected during midsummer. The supplier of water shall collect one (1) sample or more if required by the division for analysis from each plant using any groundwater source. The cabinet may consider multiple wells drawing raw water from a single aquifer one (1) treatment plant for determining the minimum number of samples.

(3) Sampling point. Suppliers of water for community public water systems shall collect samples from a representative entry point to the water distribution system for analysis to determine the corrosivity characteristics of the water.

(4) Determination of corrosivity characteristics. Parameters for the determination of corrosivity characteristics shall be pH, calcium hardness, alkalinity, temperature, total dissolved solids (total filterable residue), and calculation of the Langelier Index in accordance with subsection (5) of this section. The determination of corrosivity characteristics shall include one (1) round of sampling two (2) samples per plant for surface water and one (1) sample per plant for groundwater sources. The cabinet may require more frequent monitoring as appropriate. The cabinet may require monitoring for additional parameters which may indicate corrosivity characteristics, such as sulfates and chlorides.

(5) Langelier Index calculation. Based on the parameters in subsection (4) of this section the Langelier Index shall be calculated pursuant to the latest addition of "Standard Methods for the Examination of Water and Wastewater." In certain cases, the Aggressive Index can be used instead of the Langelier Index. The supplier shall request substitution, in writing, to the division and the division will make the determination. For interpretive purposes the following table of indices shall be used.

Corrosivity Characteristics as Addressed by Indices

Corrosive Characteristics	Langelier Index	Aggressive Index
Highly aggressive	<-2.0	<10.0
Moderately aggressive	-2.0 to 0.0	10.0 to 12.0
Nonaggressive	>0.0	>12.0

(6) Reporting. The results of the analyses for the corrosivity characteristics shall be reported to the cabinet within ten (10) days after the sample results are received. If more frequent sampling is required by the cabinet, the supplier may accumulate the data and report each value within ten (10) days of the end of the month in which the analytical results of the last sample are received.

(a) If the corrosive characteristics derived from the calculation in subsection (5) of this section indicate that the water distributed is highly aggressive the water supply system shall notify the cabinet whether the following materials are present in the distribution system:

1. Lead from piping, solder, caulking, interior lining of distribution mains, alloys, and any other source;
2. Copper from piping, alloys, service lines, or any other source;
3. Galvanized piping, service lines, or any other source;
4. Ferrous piping materials such as cast iron and steel; and
5. Asbestos cement pipe.

(b) In addition, the cabinet may require identification and reporting of other materials of construction present in distribution systems that may contribute contaminants to the drinking water including, but not limited to:

1. Vinyl lined asbestos cement pipe;
2. Coal tar lined pipes and tanks.

(7) Measurement techniques. Measurement for corrosive characteristics as listed in subsection (4) of this section shall be conducted in accordance with procedures and methods set forth in "Standard Methods for Examination of Water and Wastewater," 14th Edition or Editions subsequently published. Alternative methods approved by the cabinet may be substituted.

Section 18. [17.] Sampling and Reporting Other Contaminants, Sodium and Corrosivity Characteristics. Analytical results generated by analyses made pursuant to Sections 15, 16, and 17 [14, 15, and 16] of this regulation shall be determined and reported on:

(a) One (1) sample taken in a volume sufficient to make all analytical determinations required in Sections 15, 16, and 17 [14, 15, and 16] of this regulation; and

(b) The secondary chemical analyses report form (WACQ 010) supplied by the cabinet.

Section 19. [18.] Penalties. Penalties shall be as provided by KRS 224.994.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 7, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

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

401 KAR 6:040. Water treatment plants; water distribution systems; certification of operators.

RELATES TO: KRS Chapters 223, 224
STATUTORY AUTHORITY: KRS 224.032(5), 224.033(17)

NECESSITY AND FUNCTION: The secretary is directed to adopt regulations applicable to certification of water treatment operators. This regulation establishes standards for classification of water treatment plants and water distribution systems; qualifications of applicants; examination procedures; duties of the board; and provisions relating to the issuance, renewal, revocation of certificates, fee schedule and other provisions necessary for certification of operators.

Section 1. Definitions. The following terms shall have the meanings set forth below unless the content clearly indicates otherwise:

(1) "Board" shall be the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators.

(2) "Cabinet" shall be the Natural Resources and Environmental Protection Cabinet.

(3) "Consulting operator" shall mean a person who is not a direct employee of a water treatment plant or distribution system, but who from time to time is hired under contract to take responsible charge of such system or plant.

(4) "Department" shall mean the Kentucky Department for Environmental Protection.

(5) "Secretary" shall be the Secretary of the Cabinet.

(6) "Certificate" shall mean a certificate of competency issued by the secretary or his designated agent stating that the operator has met all requirements for the specified operator classification as set by this regulation.

(7) "Operator" shall mean any person who has responsibility and authority to conduct or supervise the procedures and practices necessary to ensure that the water supply system or any portion thereof is operated in accordance with laws and regulations of the Commonwealth. "Operator" includes all operating personnel who have day-to-day responsibility to make those decisions necessary to ensure that the water produced or distributed meets applicable standards and consulting operators as defined in this regulation. Maintenance personnel and others who do not deal directly with the production or distribution of potable water are not included in the term "operator."

(8) "Public water system" means any system, irrespective of ownership, for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such terms include: the source of supply and all structures and appurtenances used for collection, treatment, storage and distribution facilities under control of the operator of such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a "community water system" or a "noncommunity water system."

(a) "Community water system" means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(b) "Noncommunity water system" means a public water system which serves at least fifteen (15) service connections used by individuals for a period less than year-round or which serves an

average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year but less than year-round.

(9) "Semipublic water supply" means any water supply made available for drinking and/or domestic use which serves more than three (3) families but does not qualify as a public water system.

(10) "Water treatment plant" shall mean that portion of the water supply system which is designed to alter the physical, chemical, or bacteriological quality of the water.

(11) "Water distribution system" shall mean the portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of a consumer.

Section 2. General Provisions. (1) Each public water system shall be operated by a certified operator at all times. The operator shall hold a valid and effective operator's certificate in a class equal to or higher than the system under his direction. Water treatment systems which operate more than one (1) shift per day may use an operator who is certified in the next lower classification for the additional shifts, provided that the operator with the appropriate classification is available should an emergency arise.

(2) Certified operators are not required by law for semipublic water systems. It is expected that such systems will be operated by competent operators.

(3) A consulting operator may operate a system for a fixed period of time, not to exceed six (6) months, as approved by the board on a case-by-case basis. The decision for assigning the allowable period shall be based on at least the size of the plant or system, any operational problems, and the degree of attention being provided by the consulting operator. A consulting operator shall hold a certificate in a class equal to or higher than the system which is to be under his/her direction.

Section 3. Duties of the Board. In carrying out its responsibilities the board shall:

(1) Examine the qualifications of applicants for certification;

(2) Review and approve all substitutions of education for experience;

(3) Review and assist in the preparation of examinations;

(4) Review the results of examinations;

(5) Recommend qualified applicants for certification by the cabinet;

(6) Maintain records;

(7) Recommend revocation of certificates for operators who fail to comply with applicable law and regulations;

(8) Review the regulations for certification of states which are seeking reciprocity with the Commonwealth; and

(9) Review applications and supporting documents and determine eligibility of applicants for examination and notify them of their status.

(10) Determine the length of time for which a consulting operator may be in responsible charge of a water treatment plant or distribution system.

(11) Review and approve by January 1st of the first year of the renewal period the draft schedule of reasonable fees submitted by the cabinet.

(12) Provide for distribution of the approved fee schedule to all affected operators prior to the beginning of each renewal period.

Section 4. Application for Certification. (1) An operator desiring to be certified shall file application with the board, preceding examination, on an application form provided by the board.

(2) The executive secretary-treasurer of the board shall assemble all the information needed by the board to determine eligibility of the applicant for examination and certification.

Section 5. Examinations. (1) The board and cabinet shall be jointly responsible for preparation of the examinations to be used in determining knowledge, ability and judgment of the applicants.

(2) Examinations shall be conducted at least semiannually at places and times set by the cabinet with suitable method of advance announcements made by the cabinet.

(3) Except in cases which the board may decide represent proper exceptions, all examinations shall be written. All examinations will be graded by the board, or by its designated representative and the applicant notified of the outcome. Applicants will be required to achieve a score of seventy (70) percent in order to pass the examination. Papers will not be returned to the applicant, but means will be provided to review the results with a member of the board or cabinet upon written request by the applicant.

(4) Applicants who fail to pass an examination are not eligible to repeat the examination until a period of ninety (90) days has elapsed.

Section 6. Fees. (1) Fees for certification of water treatment plant and water distribution system applicants for classes I through IV and limited shall be the following:

(a) Initial examination: thirty-five (35) [fifteen (15)] dollars.

(b) Certification by reciprocity: **thirty-five (35)** [fifteen (15)] dollars.

(c) Reexamination for a new certificate or to make up for failure to pass an examination: thirty-five (35) [fifteen (15)] dollars for each reexamination.

(d) Reinstatement of a lapsed certificate: thirty-five (35) [fifteen (15)] dollars plus renewal fee.

(e) Certificate renewal: thirty-five [eight (8)] dollars per **biennium** [year].

(2) For training sessions conducted by the cabinet: five (5) dollars per contact hour. [All fees for consulting operators shall be at a rate twice that in subsection (1) of this section.]

(3) Fees accompanying applications will not be returned to those who fail to pass the examination.

(4) The cabinet will provide an estimate of program costs for the upcoming renewal period and a draft schedule of reasonable fees for that renewal period to the board for approval by the first of November prior to the beginning of the new renewal period.

Section 7. Issuance of Certificates. (1) Upon satisfactory fulfillment of the requirements provided herein and upon recommendation of the Board of Certification, the cabinet shall issue a suitable certificate to the applicant

designating the classification of the water treatment plant or water distribution system for which the operator has demonstrated competency.

(2) Duration and renewal of certificates.

(a) Certificates for all operator classes, except limited, shall be valid for two (2) years after each renewal unless revoked for cause or replaced by one of a higher classification. Certificates of operators in good standing will expire on the last day of February of even-numbered years, but may be renewed without examination upon written application and submission of the applicable renewal fee.

(b) Limited certificates will be renewed annually and only after the cabinet certifies that the holder of the certificate has complied with all requirements for properly operating the facility under his charge.

(c) Certificates which are not renewed before June 1 of even-numbered years will be considered lapsed and may not be renewed without payment of an additional fee as specified in Section 6 of this regulation.

(3) Certified operators who desire to become certified in a higher classification shall satisfactorily complete the requirements for the higher classification before a new certificate is issued. Experience under a limited certificate does not count toward fulfillment of qualifications for other classifications.

(4) Certificates shall be valid only so long as the holder uses reasonable care, judgment and application of his/her knowledge in the performance of his/her duties. No certificate will be valid if obtained through fraud, deceit or the submission of inaccurate data on qualifications.

(5) Operators holding certificates in any operator classes, except limited, who terminate their employment as a water treatment plant or water distribution system operator will be considered to have a valid certificate for the unexpired portion of the renewal period. Upon expiration of this period, these certificates may be moved to inactive status, provided the operator continues to pay his certificate renewal fee and maintains proper continuing education credits. An inactive certificate may become active when the operator again is employed by a water treatment plant or distribution system and the operator submits to the board an application for reactivation containing at a minimum the name of the plant or system by which he/she is employed and provided the board determines that all other current requirements for certification are met. Consulting operators are considered to be on inactive status except for periods specifically designated by the board under the provisions of Section 2 of this regulation. Otherwise, the certificate will be automatically invalidated. Limited certificates become invalid immediately if not renewed.

(6) Operators whose certificates have been invalidated may have their certificates reinstated or be issued new certificates after passing an examination in the classification for which they are qualified.

(7) Certificates in a comparable classification may be issued without examination to any person who holds a certificate in any state, territory, or possession of the United States or any country provided the requirements for certification of operators under which the person's certificate was issued do not conflict with any provisions of KRS Chapter 223 and are of a standard not lower than that specified by regulations adopted under said chapter; and, providing further, that reciprocal privileges are granted to certified operators of this state.

(8) Wall certificates shall be prominently displayed in the office of the operator.

(9) Wallet cards showing current certification status shall be carried by the operator at all times while on duty.

(10) Training requirements.

(a) Class II, III, and IV operators and all consulting operators shall complete twelve (12) hours of appropriate board-approved training for certificate renewal. Class I operators shall complete six (6) hours of training for renewal. Such training shall include, but is not limited to, correspondence courses, short courses, trade association meetings, and on-the-job training. Training hours completed in any given biennium in excess of the minimum requirement necessary for renewal may be carried forward for one (1) renewal period. No training is required for holders of limited certificates.

(b) The board may waive any or all of the requirements of paragraph (a) of this subsection for all or portions of a class of operators as defined in Section 9 of this regulation.

[(c) Requirements of this subsection shall be effective for certification renewal at midnight on February 28, 1988.]

Section 8. Revocation of Certificates. The cabinet may revoke the certificate of an operator following a hearing before the cabinet or its designated representative when it is found that the operator has practiced fraud or deception, that reasonable care, judgment or the application of his/her knowledge was not used in the performance of his/her duties, or that the operator is incompetent, unable or unwilling to perform his/her duties properly.

Section 9. Classification of Water Treatment Plants and Water Distribution Systems. (1) Classification shall be generally in accordance with the following classes. However, the cabinet may make changes in classification in accordance with the needs created by particular complexities of any specific plant or distribution system by reason of special features of design, or by reason of a source of supply that is particularly hazardous or which has characteristics that may make operation more difficult than normal, or a combination of such conditions. Due notice of any such change shall be given to the owner of the treatment plant and/or water distribution system.

(2) Water treatment plants.

(a) Class I.

1. (Class IA-D) All plants using physical treatment and disinfection wherein the treatment plant operator is also responsible for the distribution system and which serves a population less than 500.

2. (Class IB-D) All plants using disinfection wherein the treatment plant operator is also responsible for the distribution system and which serves a population less than 500.

(b) Class II.

1. (Class IIA) All plants using physical and chemical treatment including chemical coagulation and/or water softening processes, filtration and disinfection and serving a population less than 3,000.

2. (Class IIB-D) All plants using physical treatment and disinfection wherein the treatment plant operator is also responsible for the distribution system and which serves a population equal to or greater than 500 but less than 3,000.

3. (Class IIC-D) All plants using disinfection wherein the treatment plant operator is also responsible for the distribution system and which serves a population equal to or greater than 500 but less than 3,000.

(c) Class III.

1. (Class IIIA) All plants using physical and chemical treatment including chemical coagulation and/or water softening processes, filtration and disinfection and serving a population equal to or greater than 3,000 and less than 15,000.

2. (Class IIIB) All plants using physical treatment and disinfection and serving a population equal to or greater then 3,000.

3. (Class IIIC) All plants using disinfection and serving a population equal to or greater than 3,000.

(d) Class IVA. All plants using physical and chemical treatment including chemical coagulation and/or water softening processes, filtration and disinfection and serving a population equal to or greater than 15,000.

(3) Water distribution system.

(a) Class ID. All distribution systems serving a population less than or equal to 1,500.

(b) Class IID. All distribution systems serving a population greater than 1,500 and less than or equal to 15,000.

(c) Class IIID. All distribution systems serving a population greater than 15,000 and less than or equal to 50,000.

(d) Class IVD. All distribution systems serving a population greater than 50,000.

(4) A limited classification is available to water treatment facilities for schools or semipublic water supplies.

(5) Special designation(s) may be added to any certificate when found necessary to show competency of the operator for a parameter of treatment or operation not covered by the basic requirements for standard classification contained herein.

Section 10. Classification of Water Treatment Plant and Water Distribution System Operators. Nine (9) classes of operators are hereby established and are designated as Class I through Class IV, consulting operator Class I through Class IV, and limited. Each operator classification is intended to relate directly to the corresponding classification of water treatment plant or water distribution system.

Section 11. Operator Qualifications: Experience, Education and Equivalencies. (1) Operators shall be examined by the board as to education, experience, and knowledge as related to the classification of water treatment plants or water distribution systems for which examined. Applicants must pass the required written examinations.

(2) Experience and educational requirements of operators shall be based on the following classifications of plants or systems:

(a) Class IA-D and Class IB-D.

1. Completion of high school or General Educational Development (GED) test; and

2. One (1) year of acceptable operation of applicable treatment plant and distribution system.

(b) Class IIA.

1. Completion of high school or GED; and

2. Two (2) years of acceptable operation of an applicable treatment plant with six (6) months in a Class IIA treatment plant or higher.

(c) Class IIB-D and Class IIC-D.

1. Completion of high school or GED; and

2. For Class IIB-D, two (2) years acceptable operation of a Class IA-D combined treatment and distribution system with six (6) months in a Class IIB-D treatment plant or higher; or

3. For Class IIC-D, two (2) years acceptable operation of a Class IB-D combined treatment and distribution system with six (6) months in a Class IIC-D treatment plant or higher.

(d) Class IIIA.

1. Completion of high school or GED; and

2. Three (3) years of acceptable operation of applicable treatment plant of Class IIA or higher with six (6) months experience in a Class IIIA treatment plant.

(e) Class IIIB.

1. Completion of high school or GED; and

2. Three (3) years of acceptable operation of applicable treatment plant or Class IIB-D or higher with six (6) months experience in a Class IIIB treatment plant.

(f) Class IIIC.

1. Completion of high school or GED; and

2. Three (3) years of acceptable operation of applicable treatment plant of Class IIC-D or higher with six (6) months experience in a Class IIIC treatment plant.

(g) Class IVA.

1. A college degree in a standard curriculum in engineering, allied sciences or equivalent; and

2. At least two (2) years of acceptable operation of Class IIA treatment plant or higher with one (1) year in a Class IVA treatment plant.

(h) Limited classification. Under the provisions of KRS 223.160, an operator of a water treatment facility for a school or for a semipublic water supply shall be entitled to a limited certificate of competency for his particular facility provided he has demonstrated that he has the knowledge and experience required to operate properly the particular water treatment facility for which he is responsible.

(i) The qualifications for all consulting operator classifications shall be the same as those of the corresponding operator classifications contained in paragraphs (a) through (g) of this subsection.

(j) The following requirements shall apply to the certification of distribution system operators.

1. Class ID. Completion of high school or general educational development (GED) test; and one (1) year of acceptable operation of a distribution system.

2. Class IID. Completion of high school or GED; and two (2) years of acceptable operation of distribution system with six (6) months in a Class IID distribution system or higher.

3. Class IIID. Completion of high school or GED, three (3) years of acceptable operation of a distribution system of Class IID or higher, and six (6) months experience in a Class IIID distribution system.

4. Class IVD. A high school diploma or GED, and at least two (2) years of acceptable

operation of Class II distribution systems or higher with one (1) year in a Class IV distribution system.

(k) For operators who were certified in any classification on March 12, 1985, the requirement for a high school diploma or GED shall not preclude their advancing to the next higher classification than they held on that date.

(3) Where applicable, education may be substituted for a portion of experience requirements as specified below:

(a) No substitution for Class I.

(b) College credits earned in engineering, allied sciences or an associate degree in engineering technology may, as approved by the board, be substituted for experience limited to one (1) year for Class II, two (2) years for Class III, and three (3) years for Class IV. Education applied to the experience requirement cannot also be applied to the educational requirement.

(c) Where applicable, experience may be substituted for education requirements as specified below:

1. Two (2) years experience in an important phase of operation at a Class II level or above will be considered equivalent to one (1) year of college. Eight (8) years of such experience may be substituted for the requirement of a college degree by a high school graduate or recipient of a GED.

2. Experience applied to education requirements may not also be applied to the experience requirement.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Hearing)

401 KAR 6:300. Water well drillers certification; examination; fees.

RELATES TO: KRS 223.400 through 223.460, 223.991

STATUTORY AUTHORITY: KRS 223.420

NECESSITY AND FUNCTION: This regulation contains provisions for the general practice of water well drilling, including application requirements, conduct of examinations and a schedule of fees. The schedule of fees included herein will partially reimburse the cabinet's expenses for this program and implementation of this fee schedule is required by law.

Section 1. Examinations. (1) The water well drillers certification examination shall consist of two (2) parts. The first part shall be the National Water Well Drillers standardized examination. All examinees shall take both the general examination and the speciality examination in their area of practice. This part shall constitute seventy (70) percent of the total value of the examination. The second portion of the examination shall consist of questions relating to applicable laws and regulations and other issues as the cabinet deems necessary.

(2) A passing grade for the examination shall be seventy (70) percent correct answers on the composite examination. Any person who does not obtain a passing grade on the total examination, but scores higher than seventy (70) percent on the first part of the examination, need only take the second portion as defined in subsection (1) of this section and score at least seventy (70) percent thereon for certification.

(3) The examination will be offered only to those persons who have verified to the cabinet that they have two (2) years of water well drilling experience under a certified water well driller.

(4) The cabinet will schedule water well drillers examinations at least twice a year.

(5) Drillers who have passed all applicable portions of the National Water Well Drillers examination previously or who have passed this examination when administered by someone other than the cabinet shall be required to take only the second portion of the examination as defined in subsection (1) of this section. A seventy (70) percent score shall be required for passing.

Section 2. Fees. (1) A nonrefundable fee of twenty-five (25) dollars shall be submitted with each application.

(2) The cabinet will require an advance payment of forty (40) [twenty-five (25)] dollars for each examination administered.

(3) An applicant, upon notification that all requirements have been met for certification, shall remit a certification fee of $250 [100] for initial certification.

(4) The fee for certificate renewal shall be $250 [100] per year.

(5) Certified [All fees shall be in the form of a] checks or money orders shall be payable to the Kentucky State Treasurer.

(6) The provisions of this regulation shall apply to applications, examinations, and initial certifications submitted on or after October 1, 1988. The certificate renewal fee shall become effective upon the beginning of the next certification year after October 1, 1988.

Section 3. Issuance, Expiration, and Reinstatement of Certificates. (1) All certificates will be valid from the date of issuance until the next June 30th. Renewed certificates will bear as their date of issue July 1 of the appropriate year. Newly issued certificates will bear as date of issuance the date that all certification requirements are deemed fulfilled.

(2) Any certificate for which the renewal fee is not paid within ninety (90) days of the beginning of the certification year, which shall be July 1, shall be considered expired. Such expired certificates may be reinstated without examination within two (2) years of the beginning of the certification year in which they expire by the driller's paying the current year's renewal fee. After two (2) years the certificate is invalid and the driller shall be required to meet all requirements for certification established in this regulation.

Section 4. Wallet Cards. (1) The cabinet will provide upon certificate issuance and again upon each annual renewal a card of suitable size to be carried in a wallet and bearing at least the name and certificate number of the driller and indicating the period for which the card is

issued. This wallet card shall be carried by the driller at all times while on a job site.

(2) The cabinet will also provide wallet cards which shall be used by the driller's employees who will at any time be in charge of well construction in the drillers absence. This card shall bear the driller's certification number and signature and shall be carried by such employees at all times on the construction site.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 39:020. Delisting and exemption fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871, 224.994

STATUTORY AUTHORITY: 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 fees for a petition to delist a hazardous waste and for applications for specific exemptions.

Section 1. Applicability of [for] Delisting Fees. (1) A petition to delist a hazardous waste in accordance with Section 1 of 401 KAR 31:060 [31:062] shall be accompanied by payment of a fee of $6,000 for each hazardous [2,000 per] waste petitioned. If a hazardous waste has been granted a temporary exclusion and is listed in Section 3 of 401 KAR 31:070 and the generator petitions to have that waste delisted in accordance with Section 1 of 401 KAR 31:040, then a payment of $3,000 [1,000] per waste shall accompany the petition to delist.

(2) The provisions of this regulation shall apply to delisting petitions submitted on or after October 1, 1988, and to such petitions which are not complete, as determined by the cabinet, by October 1, 1988. Delisting petitions which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to this regulation as in effect on December 2, 1983.

Section 2. Applicability for Exemption Fees. (1) An application for an exemption of a hazardous constituent in a permit in accordance with Section 4(2) of 401 KAR 34:060 or an application to establish alternate concentration limits in accordance with Section 5(2) of 401 KAR 34:060 shall require submittal of a fee to the cabinet. The fee charged shall be the cost of the review. [The cost shall not exceed $30,000 for the first constituent reviewed and $7,500 for each additional constituent reviewed.] All fees collected shall be used to defray the costs for performing the required review activities to determine whether or not the exemption shall be granted or the alternate concentration limit established. [Such fees shall be deposited in the Division of Waste Management's Agency Receipt Account.]

(2) The provisions of this regulation shall apply to applications for exemptions of a hazardous constitutent and applications to establish alternate concentration limits submitted on or after October 1, 1988, and to such applications which are not complete, as determined by the cabinet, by October 1, 1988. Applications for exemptions and applications to establish alternate concentration limits which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to this regulation as in effect on December 2, 1983.

Section 3. Submittal of Fee. The fee for delisting shall be submitted to the cabinet with the petition for delisting. The fee for an application for a specific exemption shall be submitted upon the cabinet's request at the completion of the review. The checks shall [should] be made payable to the Kentucky State Treasurer.

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

401 KAR 39:030. Part B treatment, storage, or disposal facility fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871

STATUTORY AUTHORITY: KRS 13A.210, 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 the fee schedule for Part B permits for treatment, storage, or disposal facilities.

Section 1. Applicability. (1) This regulation applies to all treatment, storage, or disposal facilities required by Section 4 of 401 KAR 38:010 to obtain a construction/operating permit from the cabinet.

(2) The provisions of this regulation shall apply to permit applications for treatment, storage, or disposal facilities submitted on or after October 1, 1988, and to such applications which are not complete, as determined by the cabinet, by October 1, 1988. Permit applications for treatment, storage, or disposal facilities which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to

this regulation as in effect on December 2, 1983.

Section 2. Filing Fees. Any owner or operator who submits an application for a permit for a treatment, storage, or disposal facility shall submit with the application a nonrefundable filing fee in the amount of $6,800.

Section 3. [2.] Review Fees. Any owner or operator who submits [Schedule of Fees for Part B Permit Applications and Permit Renewals for Treatment Facilities. A fee shall be required in order to obtain] a permit application for [the construction and/or the operation of] a hazardous waste treatment, storage, or disposal facility or [and] for a permit renewal shall submit with the application a nonrefundable review fee. Any owner or operator who has submitted an application but has not received a permit shall be subject to these fees. [The fee will include a Review of General Facility Requirements Fee of $4,000 assessed for each facility. The Review of General Facility Requirements Fee will be charged once per permit application and will not be charged in duplicate or triplicate for an application for any combination of treatment, storage and disposal activities for the same facility if application for all activities is made at the same time.] The review [A] fee shall [will] be the sum of the unit fees charged for each type of hazardous waste management [regulated] unit at the facility. The incinerator unit fee shall be paid once for each different type of incinerator unit at the facility. The types of incinerator units are liquid injection, rotary kiln, fluidized bed and multiple hearth. The unit fees shall be [are as follows]:

(1) Incinerator - $19,400 [4,250];
(2) Waste piles - $12,200 [3,000];
(3) Surface impoundments - $14,000 [3,000]; [and]
(4) Tanks - $11,000; [2,700];
(5) Containers - $7,700;
(6) Land treatment - $15,800; and
(7) Landfills - $15,000.

Section 4. RCRA Facility Assessment Fees. Any owner or operator who submits an application for a treatment, storage, or disposal facility shall submit with the application a nonrefundable RCRA Facility Assessment Fee. Any owner or operator who has submitted an application but has not received a permit shall be subject to these fees. The RCRA Facility Assessment Fee shall be $11,500.

Section 5. [3.] Submittal of Fees. All fees shall be paid by check or money order [The $4,000 Review of General Facility Requirements Fee shall be submitted to the cabinet with the permit application. The cabinet shall notify the applicant of the additional amount owed. All checks should be] made payable to the Kentucky State Treasurer.

Section 6. Repeal. 401 KAR 39:040, Storage facility fees, and 401 KAR 39:050, Disposal facility fees, are repealed.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 39:060. Short-term fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871
STATUTORY AUTHORITY: KRS 13A.210, 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 the fee schedule for short-term permits.

Section 1. Applicability. (1) This regulation applies to facilities which require emergency permits[, trial burn permits] and land treatment demonstration permits.

(2) The provisions of this regulation shall apply to short-term permit applications submitted on or after October 1, 1988, and to such applications which are not complete, as determined by the cabinet, by October 1, 1988. Short-term permit applications which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to this regulation as in effect on December 2, 1983.

Section 2. Fees. The fees for short-term permits are as follows:

(1) Emergency permits - $750 [250];
[(2) Trial-burn permits - $2,000;] and
(2) [(3)] Land treatment demonstration - $5,500 [3,500].

Section 3. Submittal of Fees. The appropriate fee for short-term permits shall be submitted to the cabinet with the permit application. The check shall [should] be made payable to the Kentucky State Treasurer.

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
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401 KAR 39:070. Modification fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871
STATUTORY AUTHORITY: KRS 13A.210, 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. The purpose of this regulation is to establish fees for modification of permits for hazardous waste management.

Section 1. Applicability. [[](1)[]] This regulation applies to all owners and operators of hazardous waste facilities in Kentucky who apply for [require] a modification to their hazardous waste management permit as specified in Section 2 of 401 KAR 38:040 and Section 2 of 401 KAR 38:050.

[[](2) The provisions of this regulation shall apply to applications for permit modifications submitted on or after October 1, 1988, and to such applications which are not complete, as determined by the cabinet, by October 1, 1988. Applications for permit modifications which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to this regulation as in effect on December 2, 1983. [**In the event modification of a permit is required as a result of changes in Kentucky Statute or the Hazardous Waste Management Regulations, no modification fee shall be imposed.**]

Section 2. Minor Modifications. A nonrefundable fee of $300 [fifty (50) dollars] per minor modification shall [must] be submitted to the cabinet with the application for minor modification. Minor modifications are defined in Section 2 of 401 KAR 38:050.

Section 3. Major Modifications. Major modifications are defined in Section 2 of 401 KAR 38:040. Subsection (1) of this section sets forth the nonrefundable major modification fees for the addition of one (1) or more new waste streams and for the addition or modification of one (1) or more of the following units: tanks, surface impoundments, waste piles, incinerators, containers, land treatment units or landfill cells. Subsection (2) of this section sets forth the major modification fees for any major modification which does not meet the criteria of subsection (1) of this section. The incinerator units in subsections (1) and (2) of this section shall be paid once for each different type of incinerator unit at the facility. The types of incinerator units are liquid injection, rotary kiln, fluidized bed and multiple hearth.

(1) This subsection sets forth the major modification fees for the addition of one (1) or more new waste streams [and for the addition of one (1) or more of the following units: tanks, surface impoundments, waste piles, incinerators, containers, land treatment units or landfill cells].

(a) For the addition of new waste [- $1,500;

(b)] for treatment, storage or disposal facilities:

1. Tanks - $4,000 [1,900];
2. Surface impoundments - $5,000 [2,500];
3. Waste piles - $4,500 [2,500];
4. Incinerators - $6,500; [3,250.]
[(c) For storage facilities:]
5. [1.] Containers - $3,500 [2,100];
[2. Tanks - 1,900;]
[3. Surface impoundments - 2,500;]
[4. Waste piles - 2,500.]
[(d) For disposal facilities:]
[1. Surface impoundments - $2,500;]
6. [2.] Land treatment - $5,500; and [3,600;]
7. [3.] Landfills - $5,500 [4,000].

(b) For the addition or substantial modification of treatment, storage or disposal units (expansions, structural changes, or process changes in a unit shall be considered substantial modifications):

1. Tanks - $13,250;
2. Containers - $10,700;
3. Incinerators - $20,000;
4. Landfills - $16, 250;
5. Land treatment - $16,250;
6. Waste piles - $14,000; and
7. Surface impoundments - $16,000.

(2) This subsection sets forth the major modification fees for any major modification which does not meet the criteria of subsection (1) of this section.

(a) For treatment, storage, or disposal facilities:

1. Tanks - $6,000 [825];
2. Surface impoundments - $7,000 [900];
3. Waste piles - $6,500 [900];
4. Incinerators - $8,500; [1,275.]
[(b) For storage facilities:]
5. [1.] Containers - $5,500 [800];
[2. Tanks - 825;]
[3. Surface impoundments - 900;]
[4. Waste piles - 825.]
[(c) For disposal facilities:]
[1. Surface impoundments - $1,125;]
6. [2.] Land treatment - $7,500; and [1,375;]
7. [3.] Landfills - $7,500 [1,500].

(b) This paragraph sets forth the major modification fees for RCRA facility investigations and corrective action for solid waste management units (if applicable) at a facility in accordance with Section 12 of 401 KAR 34:060. These fees shall be:

1. RCRA facility investigation - $14,500;
2. Corrective action - $29,000.

(c) This paragraph sets forth the fees for modification of detection, compliance, and corrective action programs at a regulated unit as contained in Sections 9, 10, and 11 of 401 KAR 34:060. These fees shall be:

1. Change from detection to compliance monitoring - $6,000;
2. Change from compliance to corrective action - $8,000;
3. Modification of detection, compliance or corrective action program - $5,000.

Section 4. Submittal of Fees. The appropriate fee shall be submitted to the cabinet with the application for modification. The checks shall [should] be made payable to the Kentucky State Treasurer.

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

401 KAR 39:090. Postclosure fees.

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: 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 the fee schedule for permits for the postclosure care period for land disposal hazardous waste sites or facilities.

Section 1. Applicability. (1) This regulation applies to all owners and operators of hazardous waste sites or facilities in Kentucky who submit an application for a postclosure permit as specified in Section 1(2) of 401 KAR 38:010. This fee does not apply to owners and operators of hazardous waste sites or facilities that submit a postclosure plan as part of an application for an [a construction or] operation permit for a landfill [as] required in Section 4 of 401 KAR 38:010 and pay the fees required by 401 KAR 39:030[, 39:040, or 39:050].

(2) The provisions of this regulation shall apply to postclosure permit applications submitted on or after October 1, 1988, and to such applications which are not complete, as determined by the cabinet, by October 1, 1988. Postclosure permit applications which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to this regulation as in effect on March 10, 1988.

Section 2. Filing [Schedule of] Fees [for Postclosure Permits]. Any owner or operator who submits an application for a postclosure permit or permit renewal for a hazardous waste site or facility shall submit with the application a nonrefundable filing fee in the amount of $2,000 [A fee shall be required in order to obtain a permit for postclosure of a hazardous waste site or facility. The fee for a postclosure permit is $7,000].

Section 3. Review Fee. Any owner or operator who submits an application for a postclosure permit or permit renewal for a hazardous waste site or facility shall submit with the application a nonrefundable review fee. Any owner or operator who has submitted an application but has not received a permit shall be subject to these fees. The review fee shall be $7,000.

Section 4. [3.] Submittal of Fees. (1) The [required] fees shall be submitted to the cabinet with the permit application.

(2) All checks or money orders shall [should] be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 7, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

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

401 KAR 39:120. Part A application fee.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871, 224.994

STATUTORY AUTHORITY: 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. (1) 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.

(2) The provisions of this regulation shall apply to Part A applications for hazardous waste site or facility permits submitted on or after October 1, 1988, and to such applications which are not complete, as determined by the cabinet, by October 1, 1988. Part A applications for hazardous waste site or facility permits which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to the provisions of this regulation.

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: September 7, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

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

401 KAR 47:060. Permit fees.

RELATES TO: KRS 224.846, 224.855
STATUTORY AUTHORITY: KRS 13A.210, 224.033
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. This chapter establishes standards for solid waste sites or facilities. The purpose of this regulation is to establish a fee schedule for the issuance and modification of solid waste disposal permits or variances.

Section 1. Applicability. (1) The provisions of this regulation shall apply to the owner or operator of each solid waste site or facility required to apply for a permit, permit renewal or exemption except publicly-owned facilities.
(2) The provisions of this regulation shall apply to solid waste site or facility permit applications submitted on or after October 1, 1988, and to such applications which are not complete as determined by the cabinet, by October 1, 1988. Solid waste site or facility permit applications which are complete as determined by the cabinet, by October 1, 1988, shall be subject to this regulation as in effect on March 1, 1983.

Section 2. Filing Fees. (1) Any owner or operator may submit a preliminary application for a solid waste facility permit, permit modification, or variance for initial review and shall include with the preliminary application a check or money order for the filing fee determined by the schedule below: [without payment of any fee.]

Preliminary Application Type	Fee
Preliminary application review to determine site suitability	$500
Preliminary permit modification application review to determine site suitability for expansion	$500
Preliminary request for variance of design criteria	$500

(2) Any owner or operator who submits an application for a permit to construct for new solid waste facility sites or for expansions to existing facility sites shall include with the application a check or money order for the filing fees determined by this subsection. [in the amount of $1,000 payable to the Kentucky State Treasurer. This fee does not apply to landfarming applications.]
(a) The filing fees listed below for construction permit applications shall be submitted with the initial application.

Solid Waste Facility Type	Fee
Inert landfill	$2,500
Residential landfill	$5,000
Contained landfill	$5,000
Residual landfill	$2,500
Landfarming facility	$2,500

(b) Upon notification by the cabinet that the application is complete in accordance with Section 3(4) of 401 KAR 47:020, the owner or operator shall submit the fees for technical review of the construction permit application. The fees for technical review are listed below:

Solid Waste Facility Type	Fee
Inert landfill	$1,500
Residential landfill	$3,500
Contained landfill	$5,000
Residual landfill	$2,500
Landfarming facility	$3,000

(3) Upon notification by the cabinet that the construction application is technically in compliance with the requirements of 401 KAR 47:040 for sanitary landfills or 401 KAR 47:050 for landfarming, any owner or operator who submits an application for a permit to operate shall include with the application a check or money order in the amount of the filing fee, assessed in accordance with the [provisions set forth in subsection (4) of this section, payable to the Kentucky State Treasurer.]
[(4) Filing fee for the original permit to operate shall be determined by the] following schedule:

Solid Waste Facility Type	Fee
Contained landfill	$800
Residual landfill	$500
Residential landfill	$500
Land farming facility	$500
Inert landfill	$200

(4) Any owner or operator who submits an application for renewal of an existing solid waste facility permit shall include with the application a check or money order in an amount equal to the number of years for which the facility permit will be renewed multiplied by the amounts listed below:

Solid Waste Facility Type	Amount per year
Inert landfill	$ 300
Residential landfill receiving less than 200 tons per day	$ 500
Residential landfill receiving 200 or more tons per day	$3,000
Contained landfill	$3,000
Residual landfill	$ 500
Landfarming facility	$ 300

(5) Any owner or operator who submits an application for a solid waste facility permit [exemption, variance, major] modification [or

renewal] shall include with the application a check or money order for the fee listed below: [in the amount of $250 payable to the Kentucky State Treasurer. Any request for permit modification or issuance of a variance that does not require prior administrative review and analysis before approval can be granted will receive a letter of acknowledgment and will not require the payment of a fee.]

(a) $1,000 for modifications involving operating methods or proposed closure.

(b) Fifty (50) dollars for modifications for additional wastes not listed in the approved permit application.

(c) $500 for a variance from an existing permit requirement.

(d) $500 for change of ownership of an existing permitted facility.

(6) Any owner or operator who submits an application for the following permits shall include a check or money order as listed below:

(a) $500 for application for approval of a permit by rule granted pursuant to Section 1 of 401 KAR 47:020 or Section 1 of 401 KAR 47:050.

(b) $1,000 for application for closure of a solid waste site not under a current solid waste facility permit.

(7) [(6)] Filing fees are not refundable if an application for a permit, modification, or variance [or exemption] is denied or an application is withdrawn after the review is initiated.

(8) Submittal of Fees. The required fees shall be submitted to the cabinet with the preliminary application or application. All checks or money orders shall be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 7, 1988
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 50:036. Permit and exemption fees.

RELATES TO: KRS 224.320, 224.330, 224.340 [Chapter 224]

STATUTORY AUTHORITY: KRS 224.033

NECESSITY AND FUNCTION: KRS 224.033 permits the Natural Resources and Environmental Protection Cabinet to prescribe regulations establishing a schedule of fees for the costs of processing applications for permits authorized by KRS Chapter 224 and for exemptions or partial exemptions. This regulation defines the assessment of fees applicable to stationary air contaminant sources for issuance of permits to construct, permits to operate and exemptions. This regulation also establishes permit requirements in addition to those requirements of 401 KAR 50:035 as are necessary to implement the fee schedule established herein.

Section 1. Applicability. The provisions of this regulation shall apply to the owner or operator of each source required to have a permit by 401 KAR 50:035 except for publicly owned sources. The provisions of this regulation shall apply to permit applications submitted on or after **October 1, 1988, and to applications which are not complete by October 1, 1988** [the effective date of this regulation]. Permit applications **which are complete by October 1, 1988,** [submitted prior to the effective date of this regulation] shall be subject to this regulation as in effect on May 6, 1981.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the same meaning given them in 401 KAR 50:010.

(1) "Air pollution control equipment" means any mechanism, device, or contrivance used to control or prevent air pollution.

(2) "Construction permit fee" means a fee assessed by the cabinet according to the schedule in Section 4 of this regulation for the cost of processing applications for construction permits. ["Capital cost" means the estimated monetary resources which will have to be expended to make a proposed air contaminant source operational including the cost of installation, real estate, buildings, pollution abatement equipment, and any other equipment necessary for the operation of an air contaminant source.]

(3) "Level I model" means any of the following models as specified in the "Guideline on Air Quality Models," filed by reference in 401 KAR 50:015: PTMAX, PTPLU2, or PTDIS, or any model approved by the U.S. EPA for use in place of these models. ["Category I source" means any stationary source or modification to which 401 KAR 51:016E applies.]

(4) "Level II model" means any model specified in the "Guideline on Air Quality Models" or approved for use by [of] the U.S. EPA, other than a Level I model. ["Category II source" means any source that is not a Category I source but has a potential to emit of 100 tons per year or more of any one (1) pollutant.]

(5) "Operating permit fee" means a fee assessed by the cabinet according to the schedule in Section 5 of this regulation for the cost of processing applications for operating permits. ["Category III source" means any source that is not a Category I or Category II source.]

(6) "Pollutant" means any air contaminant reviewed by the cabinet for the purpose of issuing a permit required by 401 KAR 50:035, except for toxic air pollutants listed in 401 KAR 63:022, or potentially hazardous material or toxic substances. ["Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.]

(7) "Potentially hazardous material or toxic substance" means any pollutant the emission of which would cause a source to be subject to 401 KAR 63:020.

(8) [(7)] "Publicly owned facility" means any facility owned by the state, or any political subdivision thereof, municipality, or other public entity.

(9) "Toxic air pollutant" means any substance

listed in 401 KAR 63:022.

Section 3. Filing Fees. (1) Any owner or operator who submits an application for a permit to construct shall include with the application a [certified check or money order in the amount of the] filing fee in the amount of $705. Filing fees shall be in the form of a check or money order, [assessed in accordance with the provisions set forth in subsection (2) of this section,] payable to the Kentucky State Treasurer.

[(2) Filing fee for permit to construct shall be determined by the following schedule:]

[Capital Cost of Proposed Construction Fee (Millions of Dollars)

500 or more	$2,500
100 up to 500	$1,500
50 up to 100	$1,000
10 up to 50	$ 750
1 up to 10	$ 250
Less than 1	$ 50]

(2) [(3)] Any owner or operator who submits an application for a permit to operate or an application for an exemption shall include with the application a [certified] check or money order, payable to the Kentucky State Treasurer, in the amount of $410 [250].

(3) [(4)] Filing fees are not refundable if a permit or exemption is denied or an application is withdrawn.

(4) [(5)] Filing fees shall be applied toward the permit or exemption fee assessed in Sections 4, 5, and 7 of this regulation.

Section 4. Construction Permit Fees. (1)(a) Every owner or operator who is issued a permit to construct shall be assessed a construction permit fee by the cabinet in accordance with the provisions set forth in subsection (2) of this section.

(b) Upon making the determination that the permit can be issued, the cabinet shall so notify the applicant and send a bill for the permit fee. The permit fee shall be paid within thirty (30) days of the billing date by [and shall be a certified] check or money order for the indicated amount payable to the Kentucky State Treasurer. The permit shall be issued by the cabinet upon receipt of the total amount of the permit fee. Failure by the applicant to pay the assessed permit fee on or before the due date shall result in the forfeiture of the filing fee and denial of the permit.

(2) Fees shall be determined by summing the applicable base fee in paragraph (a) of this subsection with all [other] applicable component fees listed in paragraph (b) of this subsection.

(a) Base fees. The base fee [for each of the following category of sources] shall be derived from the number of affected facilities and the number of pollutants that are reviewed by the cabinet in the issuance of the permit and shall be determined by the formula in Appendix A to this regulation, except that the construction permit base fee shall not exceed $10,000. [:]

[1. Category III source: $400.]

[2. Category II source or sources subject to Title 401, Chapter 57: $1,000.]

[3. Category I source: $1,650.]

(b) Component fees. The component fees for each additional task [addition] necessary to complete the evaluation of the permit shall be:

1. Air quality analysis reviewed (each model): [$150 each application.]

a. Level I model: $50.

b. Level II model, except for permits requiring the application of 401 KAR 51:017: $150.

c. Level II model for permits requiring the application of 401 KAR 51:017: $350.

2. Air quality analysis performed for verification purposes (each model):

a. Level I model: $100.

b. Level II model except for permits requiring the application of 401 KAR 51:017: $200.

c. Level II model for permits requiring the application of 401 KAR 51:017: $1,840.

3. [2.] Lowest achievable emission rate (LAER), reasonably available control technology (RACT), or best available control technology (BACT) determination: $225 [150] each determination [application].

4. [3.] Preconstruction monitoring reviewed: $1,600 [: $610].

5. Review of an application for a major source or major modification: $650.

6. Review of an application with toxic air pollutants emitted at a rate equal to or greater than the adjusted significant level as determined in 401 KAR 63:021 for existing sources or 401 KAR 63:022 for new sources: as determined in Appendix B to this regulation.

7. Review of an application with potentially hazardous material or toxic substances: $60 for any permit issued to a source with one (1) or more potentially hazardous materials or toxic substances.

Section 5. Operating Permit Fees. (1) Every owner or operator issued a permit to operate shall be assessed an operating permit fee by the cabinet in accordance with the provisions set forth in this section. Upon making the determination that the permit will be issued, the cabinet shall so notify the applicant and send a bill for the permit fee payable by [certified] check or money order to the Kentucky State Treasurer within thirty (30) days of the billing date. Failure by the applicant to pay the assessed permit fee on or before the due date shall result in the forfeiture of the filing fee and denial of the permit. The permit shall be issued by the cabinet upon receipt of the permit fee.

(2) Operating permit fees shall be determined by summing the base fee in paragraph (a) of this subsection with all [other] applicable component fees listed in paragraph (b) of this subsection.

(a) Base fees. The base fee [for each of the following categories of sources] shall be determined by the formula in Appendix C to this regulation, except that the operating permit base fee shall not exceed $10,000. [:]

[1. Category III source; operating permit not preceded by a construction permit or permit following exemption expiration: $500.]

[2. Category III source; operating permit following a construction permit for initial construction or an amendment to an operating permit following reconstruction, modification, or alteration: $330.]

[3. Category I and II sources and sources subject to Title 401, Chapter 57; operating permit not preceded by a construction permit or permit following exemption expiration: $1,100.]

[4. Category I and II sources and sources

subject to Title 401, Chapter 57; operating permit renewal or operating permit following a construction permit for initial construction or an amendment to an operating permit following reconstruction, modification, or alteration: $750.]

(b) Component fees. The component fee for each additional task [addition] necessary to complete the evaluation of the permit shall be as follows, except that no fees shall be charged for tests or monitoring unless such tests or monitoring are a prerequisite for issuance of the permit:

1. Stack test or equivalent: $1,505 [1,300] each test.

2. Air quality analysis: as specified in Section 4(2)(b)1 or 2 of this regulation, as applicable [$150 each application].

3. Review of an application for a major source or for a major source following a major modification: $250.

4. Review of an application with toxic air pollutants emitted at a rate equal to or greater than the adjusted significant level as determined in 401 KAR 63:021 for existing sources or 401 KAR 63:022 for new sources: as determined in Appendix B to this regulation.

5. Review of an application with potentially hazardous material or toxic substances: $60 for any permit issued to a source with one (1) or more potentially hazardous materials or toxic substances.

[(3) The provisions of this section shall apply with respect to fees for temporary operating permits except that:]

[(a) The fee as determined by subsection (2)(a) of this section shall be multiplied by the ratio of the length of time covered by the temporary operating permit to three (3) years.]

[(b) Operating permit fees are due in full within thirty (30) days of the billing date by the cabinet.]

Section 6. Duplicate Permit Fee. Upon application for the issuance of a duplicate permit, the duplicate permit shall be issued by the cabinet upon receipt of a $300 [fifty (50) dollar] fee by [certified] check or money order payable to the Kentucky State Treasurer.

Section 7. Exemption Fees. (1) Any owner or operator granted an exemption by the cabinet pursuant to KRS 224.073 shall be assessed an exemption fee. Upon determining that the exemption can be granted, the cabinet shall so notify the applicant and send a bill for the exemption fee. The exemption fee shall be paid within thirty (30) days of the billing date, and shall be paid by [certified] check or money order, payable to the Kentucky State Treasurer. Failure by the applicant to pay the exemption fee on or before the due date shall result in the forfeiture of the filing fee and denial of the exemption. The exemption shall be granted by the cabinet upon receipt of the total amount of the exemption fee and any applicable penalties.

(2) Exemption fees shall be determined by summing the applicable base fee in Section 5(2)(a) of this regulation and all applicable component fees from Section 5(2)(b) of this regulation.

APPENDIX A TO 401 KAR 50:036
CONSTRUCTION PERMIT BASE FEE

The base fee for processing construction permit applications shall be determined by the following formula, rounded to the nearest five (5) dollar amount:

$$\text{Base Fee} = \$500\ (1 + F/4)(1 + P/8)$$

Where:

$F \equiv$ Number of affected facilities emitting pollutants which were reviewed for issuance of the permit.

$P \equiv \sum_{i=1}^{F} n_i$

$\equiv$ The sum of all pollutants emitted from each affected facility reviewed for issuance of the permit.

$n_i \equiv$ Number of pollutants reviewed at the ith affected facility.

APPENDIX B TO 401 KAR 50:036
TOXIC AIR POLLUTANT COMPONENT FEE

The component fee for toxic air pollutants shall be determined by the following formula, rounded to the nearest five (5) dollar amount:

$$\text{Component Fee} = \$50\ (TP)(1 + AF/4)$$

Where:

$TP \equiv$ Number of toxic air pollutant emitted at a rate equal to or greater than the adjusted significant level as determined in 401 KAR 63:021 for existing sources or 401 KAR 63:022 for new sources which were reviewed for issuance of the permit.

$AF \equiv \sum_{i=1}^{TP} n_i$

$\equiv$ The sum of all toxic air pollutants emitted from each facility reviewed for issuance of the permit.

$n_i \equiv$ Number of affected facilities where the ith toxic air pollutant was reviewed.

APPENDIX C TO 401 KAR 50:036
OPERATING PERMIT BASE FEE

The base fee for processing operating permit applications shall be determined by the following formula, rounded to the nearest five (5) dollar amount:

$$\text{Base Fee} = \$380\ (1 + F/20)(1 + P/40)$$

Where:

$F \equiv$ Number of affected facilities emitting pollutants which were reviewed for issuance of the permit.

$P \equiv \sum_{i=1}^{F} n_i$

$\equiv$ The sum of all pollutants emitted from each affected facility reviewed for issuance of the permit.

n_i ≡ Number of pollutants reviewed at the ith affected facility.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 7, 1988
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amende After Hearing)

405 KAR 7:020. Definitions and abbreviations.

RELATES TO: KRS Chapter 350
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in KAR Title 405, Chapters 7 through 24.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in KAR Title 405, Chapters 7 through 24 shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Administratively complete application" means an application for permit approval or approval for coal exploration where required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.

(5) [(4)] "Affected area" means any land or water which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(6) [(5)] "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(7) [(6)] "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations. [seeking a permit from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.]

(8) [(7)] "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, where required, seeking approval for coal exploration. [for the issuance for exploration approval or a permit.]

(9) [(8)] "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Permanent water impoundments may be permitted where the cabinet has determined that they comply with KRS Chapter 350 and either 405 KAR 16:100; 405 KAR 16:060, Section 10; and 405 KAR 16:210 or 405 KAR 18:100; 405 KAR 18:060, Section 10; and 405 KAR 18:220.

(10) [(9)] "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(11) [(10)] "Area" as used in KAR Title 405, Chapter 24, means a geographic unit in which the criteria alleged in the petition pursuant to 405 KAR 24:020, Sections 3 and 4 and 405 KAR 24:030,

Section 8, occur throughout and form a significant feature.

(12) [(11)] "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other such methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(13) [(12)] "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or run off outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with KAR Title 405, Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and KAR Title 405, Chapters 7 through 24.

(14) [(13)] "Cabinet" means the Natural Resources and Environmental Protection Cabinet.

(15) [(14)] "Cemetery" means any area where human bodies are interred.

(16) [(15)] "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(17) [(16)] "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of KAR Title 405, Chapters 7 through 24 where such activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water or other environmental resources.

(18) [(17)] "Coal mine waste" means coal processing waste and underground development waste.

(19) [(18)] "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including but not limited to: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(20) [(19)] "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(21) [(20)] "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(22) [(21)] "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(23) [(22)] "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(24) [(23)] "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(25) [(24)] "Complete and accurate application" means an application for permit approval or approval for coal exploration where required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and Title 450, Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval should be issued. ["Complete application" means an application for exploration approval or permit, which contains all information required under KRS Chapter 350 and Title 405, Chapters 7 through 24.]

(26) [(25)] "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(27) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface - and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(28) [(26)] "Date of primacy" means the effective date of the Secretary of Interior's unconditional or conditional approval of Kentucky's permanent regulatory program under

Section 503 of the 1977 Surface Mining Control and Reclamation Act (P.L. 95-87). The effective date of the subject approval was May 18, 1982.

(29) [(27)] "Day" means calendar day unless otherwise specified to be a working day.

(30) [(28)] "Department" means the Department for Surface Mining Reclamation and Enforcement.

(31) [(29)] "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(32) [(30)] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by KAR Title 405, Chapter 10 is released.

(33) [(31)] "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(34) [(32)] "Downslope" means the land surface below the projected outcrop of the lowest coal-bed being mined along each highwall.

(35) [(33)] "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(36) [(34)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(37) [(35)] "Excess spoil" means spoil material disposed of in a location other than the coal extraction area, provided that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(38) [(36)] "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to January 18, 1983.

(39) [(37)] "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and KAR Title 405, Chapters 7 through 24.

(40) [(38)] "Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(41) [(39)] "Federal lands program" means a program established by the Secretary of the Interior pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87, 91 Stat. 445 (30 USC Section 1201 et seq.)) to regulate surface coal mining and reclamation operations on federal lands.

(42) [(40)] "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(43) [(41)] "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(44) [(42)] "Fragile lands" means [geographic] areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged [or destroyed] by surface coal mining operations. Examples of fragile lands [These lands may] include[, but are not limited to,] uncommon geologic formations [features], paleontological sites, National Natural Landmarks [sites], valuable habitats for fish or [and] wildlife, areas where mining may result in flooding, critical habitats for endangered or threatened species of animals or [and] plants, [[]wetlands,[]] environmental corridors containing a concentration of ecologic and aesthetic features, [and []state-designated nature preserves and wild rivers,[]] and areas of recreational value due to high environmental quality[, buffer zones around areas where surface coal mining is prohibited, and important, unique or highly productive soils or mineral resources other than coal].

(45) [(43)] "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(46) [(44)] "General area" means, with respect to hydrology, the topographic and groundwater basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1)] or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and groundwater systems in the basins.

(47) [(45)] "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(48) [(46)] "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a cabinet, department, agency or office of the unit which, directly or through another unit of government, finance construction.

(49) [(47)] "Grazing land" means grassland and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of grazing operations which are adjacent to or an integral part of these operations is also included.

(50) [(48)] "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(51) [(49)] "Half-shrub" means a perennial

plant with a woody base whose annually-produced stems die back each year.

(52) [(50)] "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(53) [(51)] "Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

(54) [(52)] "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include properties [or cultural districts, places, structures or objects, including but not limited to sites] listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, archaeological [and paleontological] sites, properties having religious or cultural significant to Native Americans or religious groups, and properties [cultural or religious districts, places, or objects, or sites] for which historic designation is pending.

(55) [(53)] "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or paragraph (a)2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Land that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(56) [(54)] "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, run-off, evaporation, and changes in ground and surface water storage.

(57) [(55)] "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(58) [(56)] "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(59) [(57)] "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(60) [(58)] "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen at the time the original permit application was prepared and that is small in relation to the permit area (surface operations area for underground mining activities).

(a) Where an extension includes new areas from which coal will be removed, it will be considered as an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Where an extension is for new areas not involving extraction of coal, it will be considered an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage (surface operations area acreage for underground mining activities) or two (2) acres, whichever is greater.

(c) Cumulative acreage added by successive revisions may not exceed the above limitations.

(61) [(59)] "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Lands used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(c) Commercial agriculture activities including pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants for sale or resale.

(62) [(60)] "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining,

solution mining, borehole mining, and fluid recovery mining.

(63) [(61)] "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of stream that is below the local water table for at least some part of the year, and obtains its flow from both surface run-off and groundwater discharge.

(64) [(62)] "Irreparable damage to the environment," [as used in 405 KAR 8:010, Sections 13(5) [(4)] and 14(9) only,] means any damage to the environment, in violation of SMCRA, KRS Chapter 350, or KAR Title 405 Chapters 7 through 24, that cannot be corrected by actions of the applicant.

(65) [(63)] "Land use" means specific uses or management-related activities rather than the vegetation or cover of the land, and may be identified in combination when joint or seasonal uses occur.

(66) [(64)] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(67) [(65)] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

(68) [(66)] "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(69) [(67)] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, KAR Title 405, Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(70) [(68)] "Notice of violation" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

(71) [(69)] "Noxious plants" means species classified under Kentucky law as noxious plants.

(72) [(70)] "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(73) [(71)] "Operations" means surface coal mining and reclamation operations, all of the premises, facilities, roads and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or removal of coal.

(74) [(72)] "Operator" means any person, partnership, or corporation engaged in surface coal mining and reclamation operations.

(75) [(73)] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice; or any violation of KRS Chapter 350, KAR Title 405, Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(76) [(74)] "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(77) [(75)] "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

(78) [(76)] "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.

(79) [(77)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream."

(80) [(78)] "Performance bond" means a surety bond, collateral bond, [cash bond, letter of credit] or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and 350.700 through 350.755), [; or a bond submitted pursuant to the Kentucky bond pool;] [,] by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, KAR Title 405, Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(81) [(79)] "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(82) [(80)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(83) [(81)] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(84) [(82)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or KAR Title 405, Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by

KRS Chapter 350 and KAR Title 405, Chapters 7 through 24 are satisfied.

(85) [(83)] "Person" means any individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization, or any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government.

(86) [(84)] "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(87) [(85)] "Petitioner" means a person who submits a petition under KAR Title 405, Chapter 24 to designate a specific area as unsuitable for all or certain types of surface coal mining and reclamation operations, or who submits a petition under KAR Title 405, Chapter 24 to terminate such a designation.

(88) [(86)] "Precipitation event" means a quantity of water resulting from drizzle, rain, snow melt, sleet, or hail in a specified period of time.

(89) [(87)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have historically been used for cropland as that phrase is defined above.

(90) [(88)] "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(91) [(89)] "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(92) [(90)] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing and pattern; and the stream channel conditions on the permit area and adjacent areas.

(93) [(91)] "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(94) [(92)] "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings. [by a public agency or used principally for public business, meetings or other group gatherings.]

(95) "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.

(96) [(93)] "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(97) [(94)] "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, despite whether such use is limited to certain times or days. It includes any land leased, reserved or held open to the public because of that use.

(98) [(95)] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(99) [(96)] "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and run-off to infiltrate and reach the zone of saturation.

(100) [(97)] "Reclamation" means the reconditioning and restoration of areas affected by surface coal mining operations as required by KRS Chapter 350 and KAR Title 405, Chapters 7 through 24 under a plan approved by the cabinet.

(101) [(98)] "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(102) [(99)["Recurrence interval" means the interval of time in which an event is expected to occur once, on the average.

(103) [(100)] "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the cabinet. Reference areas must be representative of geology, soil, slope and vegetation in the permit area.

(104) [(101)] "Refuge pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(105) [(102)] "Renewable resource lands".

(a) As used in KAR Title 405, Chapter 24, "renewable resource lands" means georgaphic areas which contribute significantly to the long-range productivity of water supplies or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

(b) As used in 405 KAR 8:040, Section 26, "renewable resource lands" means [[]aquifers and areas for the recharge of aquifers and other undergroundwaters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.[]]

(106) [(103)] "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(107) [(104)] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer,

processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to KAR Title 405, Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(108) [(105)] "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(109) [(106)] "Secretary" means the Secretary of the Cabinet for Natural Resources and Environmental Protection.

(110) [(107)] "Sedimentation pond" means a primary sediment controlled structure designed, constructed and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water run-off to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce run-off volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(111) [(108)] "Significant, imminent environmental harm" is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing such harm; or

2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(112) [(109)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(113) [(110)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(114) [(111)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by a lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequence by color of higher value or lower chroma, by coarser texture or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(115) [(112)] "Soil survey" means a field or other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

(116) [(113)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mine coal, that are excavated during surface coal mining and reclamation operations.

(117) [(114)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(118) [(115)] "Steep slope" means any slope of more than twenty (20) degrees.

(119) [(116)] "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other such activities, or to remove more than 250 tons of coal. [impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.]

(120) [(117)] "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(121) [(118)] "Surety bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky where the surface or underground coal mining operation subject to the indemnity agreement is located.

(122) [(119)] "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations.

(123) [(120)] "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open

pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine site. Such activities shall not include the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him, except that noncommercial use shall not include the extraction of coal by one (1) unit of an integrated company or other business entity which uses the coal in its own manufacturing or power plants; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction; or the extraction of, or intent to extract, 250 tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16 2/3) percent of the tonnage of minerals removed for the purpose of commercial use or sale; or coal exploration. Surface coal mining operations shall also include the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

(124) [(121)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(125) [(122)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

(126) [(123)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(127) [(124)] "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(128) [(125)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(129) [(126)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(130) [(127)] "Toxic-mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(131) [(128)] "Transfer, assignment or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(132) [(129)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(133) [(130)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads; aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

(134) [(131)] "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(135) [(132)] "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, the regulations of KAR Title 405, Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, the regulations of KAR Title 405, Chapters 7 through 24, or permit conditions.

(136) [(133)] "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(137) [(134)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(138) [(135)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks

which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(139) "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(140) [(136)] "Willful violation" means an act or omission which violates the Surface Mining Control and Reclamation Act (P.L. 95-87), KRS Chapter 350, the regulations of KAR Title 405, Chapters 7 through 24, or any permit condition, committed by a person who intends the result which actually occurs.

Section 2. Abbreviations. As used in KAR Title 405, Chapters 7 through 24, the following abbreviations shall have the meanings given below:

ac - acre
CFR - Code of Federal Regulations
dB - decibels
FDIC - Federal Deposit Insurance Corporation
FSLIC - Federal Savings and Loan Insurance Corporation
Hz - hertz
KAR - Kentucky Administrative Regulations
KPDES - Kentucky Pollutant Discharge Elimination System
KRS - Kentucky Revised Statutes
l - liter
mg - milligram
MRP - mining and reclamation plan
MSHA - Mine Safety and Health Administration
NPDES - National Pollutant Discharge Elimination System
OSM - Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior
SCS - Soil Conservation Service
SMCRA - Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87), as amended
USDA - United States Department of Agriculture
USDI - United States Department of the Interior
U.S. EPA - United States Environmental Protection Agency
USGS - United States Geological Survey.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 13, 1988
FILED WITH LRC: September 14, 1988 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 7:090. Hearings.

RELATES TO: KRS 224.033, 224.081, 224.083, 350.028, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 350.020, 350.028, 350.255, 350.465, 350.610

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This regulation sets forth hearing, notice, penalty assessment and other procedural and due process provisions for the permanent regulatory program.

Section 1. Applicability. This regulation shall govern the conduct of all hearings by the cabinet for the review of determinations on permits for surface coal mining and reclamation operations and coal exploration operations, including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) and (4); orders to abate and alleviate; determinations on performance bond amount, duration, release, and forfeiture; and all other matters which in the discretion of the cabinet are appropriate for adjudication and determination by the cabinet and arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration operations as set forth in KRS Chapter 350 and KAR Title 405, Chapters 7 through 24.

Section 2. Construction. This regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this regulation.

Section 3. Proposed Penalty Assessment and Request for Hearing. (1) The cabinet shall notify any person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance of its proposed penalty assessment. The proposed assessment shall be made by authorized personnel of [within] the department [of Surface Mining Reclamation and Enforcement].

(2) In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining and reclamation operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation. Where a violation has been cited against a person conducting coal exploration operations, in determining the amount of the penalty, consideration shall be given to the above factors as applicable.

(3)(a) The cabinet shall mail, certified [postage prepaid], its notice of the proposed penalty assessment, together with copies of applicable worksheets, to the person to whom the notice or order was issued or that person's representative, within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order.

(b) Failure by the cabinet to serve the [any] proposed assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed:

1. Proves actual and substantial prejudice as a result of the delay; and

2. Makes a timely written objection to the delay. An objection shall be timely only if made on or before the last date to request a hearing under subsection (4)(b) of this section [of the preliminary hearing, or if the preliminary hearing is waived, on or before the date of the formal hearing].

(4)(a) The person to whom a proposed penalty assessment was sent who chooses not to contest the fact of the abated violation or the assessment shall pay the proposed penalty assessment in full to the cabinet within thirty (30) days from the date of mailing of the final order entered pursuant to paragraph (c) of this subsection [assessment].

(b) Within the time frames set forth in Section 4 of this regulation, the person to whom a proposed penalty assessment was sent may contest the penalty, as well as the fact of the violation, by requesting in writing, a [attending the] preliminary hearing [scheduled] pursuant to Section 4(1) of this regulation or by waiving the preliminary hearing and requesting in writing, a formal hearing [in writing] pursuant to Section 4(6) [5(1)(b)] of this regulation. Prepayment of penalties shall be made as provided in Section 4 of this regulation [therein].

(c) Failure to request either a preliminary hearing or a formal hearing in a timely manner shall be considered a waiver of the right to a hearing on the matter, an admission of the fact of the violation, and an acceptance of the proposed penalty assessment. If the person to whom the notice or order was issued fails to request the preliminary or formal hearing, or if that person fails to attend a scheduled hearing, the cabinet shall forthwith enter and mail a final order finding:

1. That the person to whom the notice or order was issued has waived his or her right to a hearing on the matter;

2. That the fact of the violation cited in the notice or order is deemed admitted and the proposed penalty assessment deemed accepted; and

3. That the proposed penalty assessment is due and payable within thirty (30) days after the mailing of the final order.

Section 4. Preliminary Hearings. (1) Following issuance by the cabinet of a notice of proposed penalty assessment, the person to whom the notice was sent may request [of noncompliance and order for remedial measures or an order for cessation and immediate compliance, the cabinet shall schedule] a preliminary hearing on the fact of the violation and the proposed penalty assessment [unless such hearing is waived by the person to whom the notice or order was issued]. The request for a preliminary hearing shall be forwarded to and received by the Division of Field Services, Frankfort office, within thirty (30) days of the date of receipt of the proposed penalty assessment or, where the document is returned undeliverable, unclaimed, or refused, thirty (30) days from the date of return. If a preliminary hearing is requested, it [The preliminary hearing] shall be scheduled for a date no later than forty (40) [sixty (60)] days after the cabinet's receipt of the request; [date of mailing of the proposed penalty assessment:] provided however, if the [that, where the preliminary hearing is to consider a] notice or order requires [requiring] cessation of mining [by a permittee], the hearing [such hearings] shall be automatically scheduled for a date [held] within thirty (30) days of the issuance of the [such] notice or order. Failure by the cabinet to schedule hearings in accordance with these time frames [a hearing for a date within sixty (60) days or to hold a hearing concerning a notice or order requiring cessation of mining within thirty (30) days, respectively,] shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the preliminary hearing and proves actual and substantial prejudice as a result of the delay. The scheduling of the preliminary hearings shall not operate as a stay of any notice or order.

(2) Notice of the preliminary hearing shall be served in accordance with Section 6 of this regulation. Notice shall also be sent to any person who filed a report which led to the issuance of the notice or order being contested. The cabinet shall post notice of the preliminary hearing at the department's appropriate regional office [closest to the mine site] at least five (5) days before the hearing. Any person shall have the right to attend and participate in the preliminary hearing.

(3) If a preliminary hearing is held before the time provided in Section 3(3) of this regulation for mailing of the proposed penalty assessment, the cabinet may propose such assessment at the preliminary hearing.

(4) The person contesting the assessment need not pay the proposed amount into escrow prior to the preliminary hearing. If such person waives the preliminary hearing, the payment provisions of subsection (6) of this section shall apply.

(5) The hearing officer may make a preliminary determination to affirm, raise, lower, or vacate the proposed penalty, or to affirm, terminate, modify, or vacate the notice or order with which the preliminary hearing is concerned. The hearing officer shall state his or her reasons therefor in writing and with particularity. Within thirty (30) days after the preliminary hearing is held, the hearing officer shall file his or her preliminary determination with the cabinet. Upon receipt, the cabinet shall immediately mail, postage prepaid, notice of the hearing officer's determination to the parties to the hearing and to any person who filed a report which led to the issuance of the notice or order which was the subject of the preliminary hearing.

(6) The person to whom the notice or order was

issued may, within thirty (30) days of the receipt [mailing] of the proposed penalty assessment or, where the document is returned undeliverable, unclaimed, or refused, thirty (30) days from the date of return, waive the preliminary hearing [in writing] and request, by written notice filed with the Division of Hearings, a formal hearing to contest either the fact of the violation or the proposed penalty assessment, or both. Such person shall [must] forward to the cabinet an amount equal to the proposed penalty assessment for placement into an escrow account, within thirty (30) days after receipt or, where the document is returned undeliverable, unclaimed, or refused, thirty (30) days from the date of return [mailing] of the proposed assessment.

(7)[(a)] An authorized representative of the cabinet shall attend the preliminary hearing. Any party to the hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. Failure to appear without good cause shall be grounds for default. The cabinet may compel the attendance of witnesses and the production of documents by the issuance of subpoenas at the request of any party. An independent hearing officer shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice. Oaths and affirmations shall be administered by the hearing officer. **The hearing officer shall permit any party to represent himself, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel, without good cause, shall be grounds for default.**

[(b) If a person to whom a notice or order was issued fails without good cause to attend the scheduled preliminary hearing or to comply with subsection (6) of this section, he or she shall be deemed to have waived all rights to contest the fact of the violation or the proposed penalty, and the cabinet shall enter a final order containing the findings set forth in subsection (10) of this section.]

(8) If an agreement is reached at the preliminary hearing, the cabinet shall present the terms of the agreement to the hearing officer and shall present in person or mail, postage prepaid, a written settlement agreement to the person to whom the notice or order was issued. Such person shall sign the settlement agreement upon presentation immediately following the preliminary hearing or return it to the cabinet within ten (10) days of the date on which it was mailed. If the signed settlement agreement is returned more than ten (10) days after its presentation or mailing, it may be voided at the cabinet's discretion. The parties to the agreement will be deemed to have waived their rights to further hearings or review of the matter, except as expressly provided in the settlement agreement. The settlement agreement shall set forth the facts and circumstances giving rise to the agreement, including a statement of the violation or violations concerned. The penalty agreed to shall be due and payable thirty (30) days after the signing of the settlement agreement. If the matter is not settled, the hearing officer shall issue his or her preliminary determination not later than thirty (30) days after the preliminary hearing was held, and the provisions of subsection (9) of this section shall apply.

(9) If no agreement is reached, any party may, within thirty (30) days after the presentation or mailing of the hearing officer's determination following the preliminary hearing, request a formal hearing. Any such request by the person to whom the notice or order was issued shall be accompanied by payment of an amount equal to the proposed penalty (as amended or affirmed pursuant to the preliminary hearing) to the cabinet, to be held in escrow. If the cabinet is the party requesting the [a] formal hearing, the payment into escrow need not be made. Failure to request a formal hearing or to submit payment within the prescribed time shall be deemed a waiver of all rights to further hearings or review of the matter, and shall be grounds for issuance of a final order of the cabinet pursuant to subsection (10) of this section.

(10) [Failure to request a formal hearing in a timely manner shall be considered an admission of the fact of the violation and acceptance of the proposed penalty assessment.] If no request for a formal hearing is made within thirty (30) days after the presentation or mailing of the hearing officer's preliminary determination following the preliminary hearing, the cabinet shall forthwith enter and mail a final order finding:

(a) That any party [the person] has waived a [his or her] right to a formal hearing on the matter;

(b) That the findings and conclusions contained in the preliminary determination of the hearing officer are admitted; and

(c) That the penalty assessment contained in the preliminary determination of the hearing officer is due and payable to the cabinet within thirty (30) days, after the mailing of the final order.

(11) No person who presided at a preliminary hearing shall either preside at a subsequent hearing in the same matter or participate in any further decision or any subsequent administrative appeal.

(12) There shall be no ex parte communications between the parties or representatives of the parties and the hearing officer.

Section 5. Formal Hearing. (1) Requests for formal hearing by persons other than the cabinet.

(a) Except as provided in paragraph (b) of this subsection, any person aggrieved by an order or determination of the cabinet may request in writing, pursuant to KRS 224.081(2), that a hearing be conducted by the cabinet. The right to demand such a hearing shall be limited to a period of thirty (30) days after the requester has had actual notice of the action, or could reasonably have had such notice.

(b) Any person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance may request a de novo formal hearing with the cabinet and pay the proposed penalty assessment into escrow pursuant to Section 4(6) or Section 4(9) of this regulation. Such request shall be filed with the Docket Coordinator, Division of Hearings, [Office of General Counsel, at the cabinet's central office] in Frankfort. The request for a hearing shall include a short and plain statement why the amount of the penalty proposed to be assessed, or the fact of the

violation, or both, is being contested. The request for a hearing shall plainly identify the notice or order that the requester is contesting. The request shall not operate as a stay of any order or notice.

(2) Initiation of formal hearing by the cabinet.

(a) The cabinet may initiate a formal hearing and may seek revocation [or suspension] of the permit and forfeiture of the bond or suspension of the permit whenever:

1. It has reason to believe that a violation of KRS Chapter 350; [or] KAR Title 405, Chapters 7 through 24; or a permit condition has occurred or is occurring; or

2. A permittee has failed to pay a civil penalty assessed in a final order of the cabinet or to undertake remedial measures mandated by a final order of the cabinet or to abate violations it was determined to have committed by a final order of the cabinet; or

3. Within thirty (30) days from presentation or mailing of the hearing officer's report, the cabinet chooses to contest a preliminary hearing determination; or

4. The provisions of KRS 350.990(9) apply; or

5. The cabinet has reason to believe that additional remedies should be sought or that an order should be entered against any person to protect the environment or the health and safety of the public; or

6. The criteria of 405 KAR 10:050, Section 3(2) or (3) apply.

(b) The cabinet shall initiate a formal hearing and shall pursue revocation [or suspension] of the permit and forfeiture of the bond or suspension of the permit whenever:

1. The permittee has willfully failed to comply with an order for cessation and immediate compliance; or

2. The cabinet has determined, pursuant to paragraph (c)[1] of this subsection, that a pattern of violations of any permit conditions or any requirements of KRS Chapter 350 or [,] KAR Title 405, Chapters 7 through 24[, or any permit conditions] exists or has existed, and that [the violations were caused by] the permittee willfully violated said conditions or requirements [,] or the violations were caused by the permittee's [through] unwarranted failure to comply with those conditions or requirements [or conditions]; or

3. The criteria of 405 KAR 10:050, Section 3(1) apply.

(c) Pattern of violations.

1. The cabinet may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area within any twelve (12) month period, after considering the circumstances, including:

a. The number of violations, cited on more than one (1) occasion, of the same or related requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or permit conditions;

b. The number of violations, cited on more than one (1) occasion of different requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or permit conditions; and

c. The extent to which the violations were isolated departures from lawful conduct.

2. The cabinet shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24 or permit conditions during three (3) or more inspections of the permit area within any twelve (12) month period. If, after such review, the cabinet determines that a pattern of violations exists or has existed, the cabinet shall request a formal hearing pursuant to this subsection [(2) of this section].

3. In determining the number of violations within any twelve (12) month period, the cabinet shall only consider [only] violations cited [issued] as a result of inspections carried out on or after May 3, 1978. The cabinet may not consider violations cited [issued] as a result of [other] inspections carried out prior to May 3, 1978 in determining whether to exercise its discretion under paragraph (c)1 of this subsection, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

4. Whenever a permittee fails to abate a violation cited [contained] in a notice of noncompliance or cessation order within the abatement period set in the notice or order or as subsequently extended, the cabinet shall review the permittee's history of violations to determine whether a pattern of violations exists or has existed pursuant to this paragraph [subsection] and shall initiate a formal hearing as provided in this subsection [section].

(3) At any formal hearing held pursuant to subsection (1) or (2) of this section [Section 5(1) or (2) of this regulation to which it is a party], the cabinet may seek any combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalties;

(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future operations;

(e) A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; and

(f) Any and all other relief to which it may be entitled by KRS Chapters 224 and 350.

(4) If the cabinet revokes or suspends the permit or exploration approval, [the permittee shall immediately cease] surface coal mining operations on the permit area or disturbances on the exploration area shall immediately cease, and the permittee or person conducting coal exploration operations shall:

(a) If the permit or exploration approval is revoked, complete reclamation within the time specified in the order; or

(b) If the permit or exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices, and [or] violations as specified in the order.

(5) If a final order of the cabinet has been issued after a preliminary hearing or under Section (3)(4)(c) of this regulation, the [, any] issues adjudicated by the [such] order shall be conclusive as between all [the] parties to the [that] hearing [and as to all persons in privity with the parties], and [the issues so resolved] shall not be readjudicated at any subsequent formal hearing [[]between the same parties[]].

(6) Administrative summons. Upon request pursuant to subsection (1) of this section, or

upon initiation by the cabinet pursuant to subsection (2), the cabinet shall schedule a hearing before the cabinet to be held not less than twenty-one (21) days after the notice of demand for such a hearing, unless the person complained against waives, in writing, the twenty-one (21) day period. The administrative summons, including a notice of hearing, shall be served in accordance with Section 6 of this regulation and shall include the following: a statement of the time, place, and nature of the hearing; a statement of the legal authority for the hearing; reference to the statutes and regulations involved; and a short statement of the reason for granting of the hearing. For all formal hearings initiated pursuant to subsection (2) of this section [Section 5(2) of this regulation], notice shall also be mailed to any intervenors, shall be posted at the department's appropriate regional office [of the cabinet] and, if practicable, notice shall be published in a newspaper of general circulation in the area of the surface coal mining and reclamation operations or coal exploration operations.

(7) Prior to a formal hearing, and upon seven (7) days' written notice to all parties, the hearing officer may hold a prehearing conference to consider simplification of the issues, admission of facts and documents which will avoid unnecessary proof, limitation of the number of witnesses, and such other matters as will aid in the disposition of the matter. Final disposition of the matter may be made at such a conference by stipulation, settlement, agreed order, summary disposition, or default for nonappearance. The parties may hold such additional conferences as may be proper to resolve any issue in dispute.

(8) All formal hearings shall be de novo as to all issues of fact and law, provided that those findings previously adjudicated by a final order of the cabinet following a preliminary hearing shall be binding against any party or parties to the preliminary hearing leading to the final order [and shall be binding against all persons in privity with the parties]. Any party to a hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. The cabinet may compel the attendance of witnesses and the production of documents by the issuance of subpoenas. An independent hearing office shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice. Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030, 400 KAR 1:040, and 400 KAR 1:050 shall apply to cases before the cabinet, consistent with KRS Chapter 350 and KAR Title 405, Chapters 7 through 24 [these regulations]. The hearing officer shall permit any party to represent himself, **except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel, without good cause, shall be grounds for default.**[]] Failure to appear without good cause or failure to comply with any prehearing or interlocutory order of the hearing officer shall be grounds for default.

(9) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(10) Each formal hearing shall be recorded, and a transcript made available on the motion of any party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay the cost thereof. The record of such hearing, consisting of: all pleadings, motions and [,] rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon; proposed findings and recommended orders; and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS 224.035. When certified by the cabinet as a true and correct copy of the testimony [by the cabinet], the transcript shall constitute the official transcript of the evidence.

(11)(a) After the hearing, the hearing officer shall issue [make] a determination [after hearing and] based on the [a] preponderance of [the] evidence appearing in the record as a whole. The determination shall set [, setting] forth whether, in fact, the violation did [in fact] occur. If the violation occurred, the determination shall specify a recommended penalty and recommended [, the amount of the penalty recommended by the hearing officer, and] remedial or compliance actions [recommended] to be taken by the permittee or the person conducting coal exploration operations. For hearings conducted pursuant to 405 KAR 7:070, the determination shall specify the recommended term and conditions for suspension or revocation of the blaster's certification in accordance with 405 KAR 7:070, Section 4.

(b) In addition to the requirements of paragraph (a) of this subsection:

1. The hearing officer may recommend suspension or revocation of the [a] permit or forfeiture of the [a] bond if the [a] permittee has violated any provision of KRS Chapter 350;

[or] KAR Title 405, Chapter 7 through 24; a [any] permit condition; or a final order, including failure to pay a civil penalty assessed in a final order of the cabinet. Provided however, the hearing officer shall recommend revocation of the [a] permit and forfeiture of the [a] bond or suspension of the permit if the permittee has [demonstrated a pattern of violations or] willfully failed to comply with an order for cessation and immediate compliance, if [or] the conditions of 405 KAR 10:050, Section 3(1) are met, or if the permittee has demonstrated a patter of violations of any requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or permit conditions, and the permittee willfully violated said requirements or the violations were caused by the permittee's unwarranted failure to comply with those requirements;

2. The hearing officer may recommend, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons should not be eligible to receive another permit or conduct future operations; and

3. The hearing officer may recommend that a person or persons [permittee] be required to abate, repair, alleviate, or prevent violations of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or a [any] permit condition, when said [which] violations are found to exist on the basis of a preponderance of the evidence.

(12) Subject to subsection (5) of this section [Section 5(5) of this regulation], the hearing officer shall recommend the amount of a civil penalty based exclusively on the record of the hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party, and shall consider the same factors set forth in Section 3(2) of this regulation for consideration in setting proposed penalty assessments. The hearing officer shall state with particularity the reasons, supported by the record of the hearing, for the penalty assessed in his final written report.

(13) Except as provided in Section 9 of this regulation for permit hearings, the hearing officer shall, within thirty (30) days of the close of the hearing record, make a report and a recommended order to the secretary. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall mail, postage prepaid, a copy of his report and recommended order to all parties. The parties may file, within seven (7) days of receipt [mailing] of the hearing officer's report and recommended order exceptions to the report and recommended order. There shall be no other or further submissions.

(14) The secretary shall consider the report and recommended order and any exceptions filed and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the cabinet's final order, or issue his or her own final order.

(15) The cabinet shall mail the final decision of the cabinet to the parties. If any extension of time is granted by the secretary for a hearing officer to complete his report, the cabinet shall notify all parties at the time of the granting of the extension.

(16) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(17) A final order of the cabinet shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the cabinet and the facts and law upon which the decision is based.

(18) There shall be no ex parte communications between the parties or representatives of the parties and the hearing officer.

(19) Any person aggrieved by a final order of the cabinet may seek judicial review as set forth in KRS 224.085 and 350.032(2).

Section 6. Service. (1) Except as provided in subsections (3) and (4) of this section, any proposed penalty assessment, notice of preliminary hearing, notice of formal hearing, or other document required to be served in accordance with this section shall be served by one (1) of the following methods:

(a) [(1)] The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The cabinet shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (2) [(3)] of this section. The return receipt shall be proof of the time, place and manner of service. To the extent that the United States postal regulations permit authorized representatives of local, state, or federal government offices to accept and sign for 'addressee only' mail, signature by such authorized representative shall constitute service on the addressee; or

(b) [(2)] The cabinet may cause the document, with necessary copies, to be transferred for service to any person authorized by the secretary or by any statute [or rule, other than by subsection (1) of this section,] to deliver them, or to any person authorized to deliver service for the purpose of an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service; or

(c) [(3) As an alternative to other methods of service specified by statute or regulation,] Service of process may be made upon a person issued a permit by the cabinet or upon a person who has submitted an exploration notice or application pursuant to 405 KAR 8:020 by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the named agent for service or the permittee (at the address [as] specified on the face of the permit, at the permanent address specified in the permit application, or

at any new address that has been specified in writing by the permittee), or in the case of coal exploration, by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the person authorized to conduct the coal exploration and addressed to said person's permanent address as noted in the exploration notice or application.

(2) Service is effective upon acceptance of the document by any person at the permanent address, upon refusal to accept the document by any person at the permanent address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) or (1)(c) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, inability to deliver, or failure to claim the document.

(3) Any other method of service authorized by statute, regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.

(4) In addition to the provisions of subsections (1) through (3) of this regulation, the provisions of 400 KAR 1:030 shall apply to service resulting from or attendant to formal hearings under Section 5 of this regulation. [The methods of service specified by this regulation shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable law.]

Section 7. Location of Hearings. [Preliminary hearings and formal hearings shall,] Upon written request filed by the cabinet or the person to whom the notice or order was issued and received within thirty (30) [fifteen (15)] days of the receipt [mailing] of the proposed penalty assessment, or, where the document is returned undeliverable, unclaimed, or refused, thirty (30) days from the date of return, the preliminary hearing or formal hearing shall [by the cabinet or the operator to whom the notice or order was issued,] be held at or reasonably close to the mine site, or at any other location acceptable to the parties. The department's appropriate regional office for [of the cabinet nearest to] the mine site shall be deemed reasonably close unless a closer location is requested by the cabinet or the person [operator] and agreed to by the hearing officer in his or her discretion.

Section 8. Temporary Relief. (1) Pending the completion of the investigation and hearings provided for in this regulation, the chief hearing officer may, subject to review by the secretary, grant temporary relief from any notice or order issued pursuant to 405 KAR 12:020, [or] permit determination, or bond release decision of the cabinet. Any request for such relief shall be in writing and shall contain a detailed statement giving reasons why such relief should be granted. The chief hearing officer may grant such temporary relief after making a written finding that such relief is warranted, and shall state the reasons for his or her finding. The chief hearing officer shall grant or deny such relief expeditiously: Provided that, where the person requests temporary relief from an order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4), or from a bond release decision, the chief hearing officer shall grant or deny such temporary relief within five (5) days of receipt of such request.

(2) The chief hearing officer may grant temporary relief from notices and orders of the cabinet issued pursuant to 405 KAR 12:020, under such conditions as he or she may prescribe, if:

(a) A hearing on the request for temporary relief has been held in the locality of the permit area, or at any other location acceptable to the cabinet and the person to whom the notice or order was issued, in which all parties were given an opportunity to be heard;

(b) The person requesting such relief shows that there is substantial likelihood that the findings on the merits in a hearing conducted by the cabinet will be favorable to such person; and

(c) Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(3) Where a person requests temporary relief from a permit or coal exploration determination, the chief hearing officer may, under such conditions as he or she may prescribe, pending final determination of the proceeding, grant such temporary relief as he or she deems appropriate, if:

(a) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(b) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(c) The relief will not effect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(d) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the cabinet, nor release of a bond when a bond release request has been denied.

Section 9. Review of Permit and Coal Exploration Determinations. Review of determinations by the cabinet on permits and revisions and renewals thereof, concerning issuance; denial; imposition of conditions; application for transfer, sale, or assignment of rights; or applications for coal exploration shall be conducted pursuant to this regulation, provided that the cabinet shall issue its final decision within twenty (20) days after the hearing, as set forth in KRS 350.090(1). The burden of proof shall be on the party seeking to reverse the determination of the cabinet. Temporary relief may be requested pursuant to Section 8 of this regulation.

Section 10. Orders to Abate and Alleviate. Whenever the secretary, pursuant to KRS 224.071, issues an order to abate and alleviate, the cabinet shall, as soon as possible, not to exceed ten (10) days thereafter, provide the person to whom the order was issued an opportunity to be heard. The holding of a hearing pursuant to this section shall not operate as a termination or stay of such an order or of the affirmative obligations imposed on any person by the order, unless the hearing officer shall find on the record that the

obligations have been met or that the order was improper or inappropriate.

Section 11. Penalties. (1) Any person or permittee who violates any of the provisions of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or a permit condition or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit, exploration approval or other authorization or who violates any determination or order promulgated pursuant to the provisions therein, may be assessed a civil penalty of not more than $5,000 for each day during which such violation continues. A civil penalty of not more than $5,000 for each day shall be assessed against any person issued an order pursuant to KRS 350.130(4).

(2) Whenever a violation has not been abated during the abatement period set forth in a notice of noncompliance and order for remedial measures or in an order for cessation and immediate compliance, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, up to a maximum of thirty (30) days, except that:

(a) Such penalty for the failure to abate the violation shall not be assessed for more than thirty (30) days for each such violation. If the permittee has not abated the violation within the thirty (30) day period, the cabinet shall take appropriate action pursuant to KRS 350.990(3), (4), (9), or the pattern of violations provisions of KRS 350.028(4) within thirty (30) days to ensure that abatement occurs or to ensure that there will not be a recurrence of the failure to abate; and

(b) If the person to whom the notice or order was issued initiates review proceedings with respect to the violation, and the abatement requirements are suspended in a temporary relief proceeding pursuant to Section 8 of this regulation, following a determination that the person requesting relief will suffer irreparable loss or damage from the application of the requirements, then the abatement period shall be extended until the date when the cabinet issues its final order concerning the violation in question.

(3) Any person who engages in surface coal mining and reclamation operations or coal exploration operations without first securing a permit or exploration approval according to KRS Chapter 350 and KAR Title 405, Chapters 7 through 24, shall be assessed a civil penalty of not less than $5,000 nor more than $25,000. Each day shall constitute a separate violation. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided for in this subsection where a permittee through inadvertence has exceeded the boundaries of the permit in effect at that time.

(4) Whenever a corporate permittee violates any provision of KRS Chapter 350 or regulations promulgated pursuant thereto, or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.

(5) Penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky or the Cabinet for Human Resources and Environmental Protection by the cabinet's office of general counsel, or upon the secretary's request, by the attorney general.

(6)(a) If any party seeks judicial review of a final order of the cabinet involving a penalty, the proposed penalty shall continue to be held in escrow until completion of the review. If no judicial review is sought, the escrowed funds shall be transferred to the cabinet for payment to the Kentucky State Treasurer as provided by law.

(b) If a final order of the cabinet or final decision of a reviewing court results in the reduction or elimination of the proposed penalty, the cabinet shall within thirty (30) days of receipt of the order refund the appropriate amount with interest at the statutory rate from the date of payment into escrow.

(c) If a final order of the cabinet or final decision of a reviewing court increases the penalty, the person to whom the notice or order was issued shall pay the difference to the cabinet within thirty (30) days after receipt of the order.

Section 12. Intervention and Consolidation. (1) Any person may petition in writing for leave to intervene at any stage of a proceeding under this regulation.

(2) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why that interest is or may be adversely affected.

(3) The hearing officer shall grant intervention where the petitioner:

(a) Had a statutory right to initiate the proceeding in which he wishes to intervene; or

(b) Has an interest which is or may be adversely affected by the outcome of the proceeding.

(4) If neither subsection (3)(a) nor (b) of this section [paragraph (a) nor paragraph (b) of subsection (3) above] applies, the hearing officer shall consider the following in determining whether intervention is appropriate:

(a) The nature of the issues;

(b) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

(c) The ability of the petitioner to present relevant evidence and argument; and

(d) The effect of intervention on the agency's implementation of its statutory mandate.

(5) Any person granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be in the discretion of the hearing officer.

(6) When proceedings involving the same permittee or a common question of law or fact are pending before the cabinet, such proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section 13. Costs and Expenses. (1) Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's

participation in any proceeding held pursuant to this regulation which results in a final order of the cabinet.

(2) The petition for an award of costs and expenses, including attorneys' fees, must be filed with the cabinet within forty-five (45) days of receipt of the final order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

(3) A petition filed under this section shall include the name of the party from which costs and expenses are sought and the following shall be submitted in support of the petition:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of such costs and expenses; and

(c) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

(4) Any person served with a copy of the petition shall have thirty (30) days from service of the petition within which to file an answer to such petition.

(5) Appropriate costs and expenses including attorneys' fees may be awarded as follows:

(a) To any person from the permittee, if the person initiates any administrative proceedings reviewing enforcement actions, upon a finding that, on or after May 18, 1982, a notice of noncompliance or order for cessation was issued for violations of KRS Chapter 350, KAR Title 405, or permit conditions or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made, if the hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues; or

(b) To any person other than a permittee or his representative from the cabinet, if the person initiates or participates in any proceeding under KRS Chapter 350 upon a finding that the person made a substantial contribution to a full and fair determination of the issues; or

(c) To a permittee from the cabinet when the permittee demonstrates that the cabinet issued an order of cessation or a notice of noncompliance or initiated a formal hearing in bad faith and for the purpose of harassing or embarrassing the permittee; or

(d) To a permittee from any person where the permittee demonstrates that the person initiated a proceeding under this regulation or participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the permittee; or

(e) To the cabinet where it demonstrates that any person applied for review pursuant to this regulation or that any party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(6) An award under this section may include reimbursement for:

(a) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under this regulation; and

(b) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award before the cabinet.

Section 14. Judicial Review. The commencement of proceedings for judicial review of any determination of the cabinet shall not operate as a stay of the final order of the cabinet, unless specifically ordered by the court.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 13, 1988
FILED WITH LRC: September 14, 1988 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.135, 350.450, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface coal mining and reclamation operations. This regulation provides for permits to conduct such operations. The regulation specifies when permits are required, [requirements for continued operation under interim permits,] application deadlines, requirements for applications for permanent program permits, fees, verification of applications [permits], public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application [permit] approval or denial and relevant actions, term of the permits, conditions of [the] permits, review of outstanding permits, revisions of permits and renewals, transfers, assignments, and sales of permit rights.

Section 1. Applicability. Excluding coal exploration operations, the provisions of this regulation shall apply to all applications, [permits and] all actions regarding permits, and all surface coal mining and reclamation operations.

Section 2. General [Permit] Requirements. (1) Permanent program permits required. No [On and after the date of primacy, no] person shall engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit under this chapter for the area to be affected by such operations[; except that, a person holding a valid interim program permit issued under Title 405, Chapters 1 or 3 is not required to obtain a permanent program permit until eight (8) months after the date of primacy for areas covered by the valid interim program permit that will be affected by surface coal mining operations after eight (8) months after the date of primacy].

(2) General filing requirements for permanent program permit[s] applications.

(a) [New areas permitted under the permanent program.] Each person who intends to engage in surface coal mining and reclamation operations [on an area not covered by a valid interim program permit] shall file a complete application for a permanent program permit which shall comply fully with all applicable requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, and shall not begin such operations until the permit is granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit under Section 21 of this regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may, at any time, apply for a revision of a permit, but shall not vary from the requirements of the permit until such revision is approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permanent program permits. An application for the transfer, sale, or assignment of rights granted under a permit may be submitted at any time. The actual transfer, sale, or assignment of permit rights, however, may not take place until written permission is granted by the cabinet. [Any application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the cabinet not later than thirty (30) days after that succession is approved by the cabinet.]

(e) Amendment of permanent program permits. A permittee may, at any time, apply for an amendment to a permit under Section 23 of this regulation, but shall not begin surface coal mining and reclamation operations on such areas until the amendment is approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

[(f) Filing requirements for persons holding valid interim program permits.]

[1. Persons who hold valid interim program permits to engage in surface coal mining and reclamation operations, and who will not engage in surface coal mining operations on such permit areas after eight (8) months after the date of primacy, are not required to submit applications for permanent program permits for such operations.]

[2. Notwithstanding any litigation contesting the approval of the Commonwealth's permanent regulatory program by the Secretary of the Interior, each person who holds a valid interim program permit to engage in surface coal mining and reclamation operations, and who intends to engage in surface coal mining operations on such permitted area after eight (8) months from the date of primacy, shall not later than two (2) months after the date of primacy file a substantially complete application, with such form and content as specified by the cabinet, for a permanent program permit for those portions of the previously permitted area which will be affected by surface coal mining operations eight (8) months after the date of primacy. The applicant shall complete the application as soon as possible after the two (2) months period, but no later than eight (8) months after the date of primacy.]

[3. Applications which are not submitted within the two (2) months period required by subparagraph 2 of this paragraph shall be treated as applications submitted in accordance with paragraph (a) of this subsection and shall not make the applicant eligible for the interim program extension under Section 3(3) and (4) of this regulation.]

(3) Compliance with permits. Any person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the provisions of the plans and other documents submitted as part of the application and approved by the cabinet, and the applicable requirements of KRS Chapter 350 and Title 405.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 USC 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 USC 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.); and the Bald Eagle Protection Act, as amended (16 USC 668a), as required by 30 CFR 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as set forth in Section 8(6) and (7) of this regulation and, if necessary, by any other measures the cabinet may deem appropriate.

[Section 3. Interim Program Permits. (1) Issuance of interim program permits after the date of primacy. During the first sixty (60) days after the date of primacy, the cabinet may issue, deny, revise or amend an interim program permit under the requirements of 405 KAR 1:005 or 405 KAR 3:005 for areas covered by an interim program application submitted prior to the date of primacy. Except as provided in subsection (2) of this section and Section 6 of 405 KAR 1:005 and 405 KAR 3:005:]

[(a) No application received by the cabinet after the date of primacy will be processed under 405 KAR 1:005 or 405 KAR 3:005; and]

[(b) No interim program shall be issued under 405 KAR 1:005 or 405 KAR 3:005 after sixty (60) days from the date of primacy.]

[(2) Revision of interim program permits after the date of primacy. The cabinet may revise a valid interim program permit at any time after the date of primacy under 405 KAR 1:005 or 405 KAR 3:005 in order to approve changes to methods of operation and to approve incidental boundary revisions where such revision is necessary for the continuation of the operation and the revision does not include additional areas from which coal will be removed.]

[(3) Continued operation under interim program permits beyond eight (8) months after the date of primacy. A person engaging in surface coal mining and reclamation operations under a permit issued by the cabinet in accordance with the requirements of the interim regulatory program

under KRS Chapter 350 may engage in surface coal mining operations on those permitted areas beyond eight (8) months after the date of primacy if and only if:]

[(a) The person has applied for a permanent program permit under this chapter as required by Section 2(2)(f)2 of this regulation; and]

[(b) The cabinet has not yet:]

[1. Denied the permit with respect to such application; or]

[2. Received the applicant's bond and issued the permit with respect to such application within thirty (30) days of the decision to issue the permit; and]

[(c) The operations are conducted in compliance with Title 405, Chapters 1 and 3, the applicable requirements of KRS Chapter 350 and all terms and conditions of the interim program permit.]

[(4) Extension and expiration of interim program permits. Notwithstanding the expiration date contained in the valid interim program permit, all valid interim program permits shall expire eight (8) months after the date of primacy unless the conditions of subsection (3) of this section are met, in which case the interim program permit shall expire on the date the cabinet:]

[(a) Denies the permanent program permit; or]

[(b) Issues the permanent program permit or on the 30th day after the date of the decision to issue, whichever is sooner.]

Section 4. Preliminary Requirements. A person desiring a permit shall submit to the cabinet a preliminary application of the form and content prescribed by the cabinet. The preliminary application shall contain pertinent information, including a map at [USGS seven and one-half (7 1/2) minute topographic map and, if necessary to show sufficient detail, an enlargement thereof of] a scale of [not to exceed] one (1) inch equals 400 or 500 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including, but not limited to, locations of the coal seam(s) to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the cabinet. Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications.

(1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form and content required by the cabinet, including a copy to be filed for public inspection under Section 8(8) of this regulation.

(b) The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet with such attachments, plans, maps, certifications, drawings, calculations or other such documentation or relevant information as the cabinet may require.

(c) The application shall be complete with respect to all information required by this Title and include, at a minimum: for surface mining activities, all the applicable information required under 405 KAR 8:030; for underground mining activities, all the information required under 405 KAR 8:040; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050. No application shall be determined to be administratively [is] complete unless all design plans for the permit area are in [final,] detailed form.

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of all technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations which collected and analyzed such data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency who provided [to the applicant,] information which is made a part of the application regarding land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or such other person who will serve as agent for service of notices and orders. Such designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number. Such person shall continue as agent for service of process until such time as written revision of the permit is made to designate another person as agent.

(b) The applicant may designate [in the permit application,] persons authorized by the applicant to submit modifications to the application to the cabinet. If such designation is not made in the application, or in separate correspondence, the cabinet shall accept such modifications only from the applicant.

(6) General requirements for maps and plans.

(a)[1.] If any of the information marked on the preliminary map required under Section 4 of this regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this regulation.

(b) [2.] Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area and adjacent areas shall be at a scale of [between] 400 or [and] 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map. However, when the cabinet determines that a map scale larger than 400 feet to the inch is required to adequately show mine site

details, a map of larger scale shall be provided by the applicant. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) [3.] Where a map or drawing is required to be certified by [Where applicable, maps shall be prepared by or under the direction of] a qualified registered professional engineer, the map or drawing shall bear the seal and signature of the engineer as required by KRS Chapter 322, and shall be certified in accordance with 405 KAR 7:040, Section 10 [by the registered professional engineer].

(d) [4.] All engineering design plans submitted with applications shall be prepared by or under the direction of a qualified registered professional engineer and shall bear the engineer's seal, [and] signature, and certification as required by KRS Chapter 322 and 405 KAR 7:040, Section 10 [, where required by this Title, shall be certified by the registered professional engineer].

(e) [(b)] Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c). [surface coal mining operations which have been or will be conducted within the permit area in the following time periods:]

[1. Prior to August 3, 1977;]

[2. Between August 3, 1977 and May 3, 1978 (January 1, 1979 for persons who received a small operator's exemption in accordance with 405 KAR 1:030 or 405 KAR 3:030);]

[3. Between May 3, 1978 (January 1, 1979, for persons who received a small operator's exemption in accordance with 405 KAR 1:030 or 405 KAR 3:030) and eight (8) months after the date of primacy;]

[4. After issuance of the permit.]

[(7) Certifications by professional engineers. All certifications required to be made by professional engineers shall be in accordance with 405 KAR 7:040, Section 10.]

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage [Permit] Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the cabinet. Such fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit.

(2) The applicant shall submit an application fee of $375 for each application, plus an additional $75 for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. However, no acreage fees shall be required for surface areas overlying underground or auger workings which are not affected by surface operations and facilities. [For applications submitted prior to July 15, 1982, the amount of such fee shall be $250 plus fifty (50) dollars for each acre or fraction thereof of the area of land to be affected under the permit except that no acreage fees shall be required for surface areas overlying underground workings which are not affected by surface operations and facilities. For applications submitted on or after July 15, 1982, the above amounts shall be increased to $375 and seventy-five (75) dollars respectively.]

(3) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. No permit application shall be processed unless the application [such] fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the application is submitted to the cabinet. The applicant may elect to begin publication on or after the date the applicant receives the notification from the cabinet under Section 13(2) [(1)] of this regulation that the application is deemed administratively complete and ready for technical review. The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application is deemed administratively complete and ready for technical review.

(b) The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application may be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, satisfactory to the cabinet, which may consist of an affidavit from the publishing newspaper certifying the dates, place and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant; and

(b) A map or description which shall:

1. Clearly show or describe towns, rivers,

streams, and [or] other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey seven and one-half (7 1/2) minute quadrangle map(s) which contains the area shown or described; and

4. If a map is used, show [indicate] the north arrow [point] and map scale.

(c) The location where a copy of the application is available for public inspection under subsection (8) of this section; [and]

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted under Sections 9, 10, and 11 of this regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except where public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6)(a) and (b); [,] a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing; [, where the relocation is to occur, and the duration of the relocation.]

(f) If the application includes a request for an experimental practice under 405 KAR 7:060, a statement indicating that an experimental practice is requested and identifying the regulatory requirement for which a variance is requested; and [The proposed postmining land use if different than the premining land use.]

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit is determined to be administratively complete [of the date of notification to the applicant as to the initial completeness of the application under Section 13(1) of this regulation], the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under Section 9 of this regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local [Federal, state and local] government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, planning agencies and sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and [general governmental entities and fish and wildlife and historic preservation agencies;]

(b) All federal and Kentucky governmental agencies which have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are a part of the permit coordination process required by Section 3 of this regulation; and

(c) Those agencies with an interest in the particular proposed operation including, but not limited to:

1. The USDA Soil Conservation Service State Conservationist;

2. The local U.S. Army Corps of Engineers district engineer;

3. The National Park Service;

4. Kentucky and federal fish and wildlife agencies; and

5. The state historic preservation officer.

[(b) Governmental planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operations;]

[(c) Sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and]

[(d) The federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application.]

(8) In accordance with Section 12 of this regulation, the cabinet shall, upon receipt of the application, make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining is proposed to occur, and shall provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies [on Permit Applications]. (1) Written comments or objections on [permit] applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies [entities] to whom notification is provided under Section 8(6) and (7) of this regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet in the manner prescribed by the cabinet, and shall be submitted within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this regulation.

(3) The cabinet shall immediately file a copy of all such comments or objections at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this regulation shall have the right to file written objections to an [initial or revised] application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by

Section 8(1) of this regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application [issuance of the permit], or the officer or head of any federal, state or local government agency or authority to be notified under Section 8 of this regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requester at the conference;

(b) State whether the requester desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 8(1) of this regulation.

(2) Except as provided in subsection (3) of this section, if a permit conference is requested in accordance with subsection (1) of this section, the cabinet shall hold a conference within twenty (20) working days after the last date to request such conference under subsection (1)(c) of this section. The conference shall be conducted according to the following:

(a) If requested under subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed surface coal mining and reclamation operations will be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a conference requester in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:090 shall not apply to the conduct of the conference. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to Title 405, Chapter 10.

(3) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference need not be held.

(4) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required under 405 KAR 24:040, Section 2(6) on proposed [uses or] relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability. [Information contained in permit applications on file with the cabinet shall be open, upon written request, for public inspection and copying at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884.]

(a) The cabinet shall make an application for a permit, major or minor revision, amendment, or renewal of a permit available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining will occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under subsections (2) and (3) of this section.

(b) The application required by paragraph (1) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office at the same time that the changes are submitted to the Division of Permits.

(2) [(a)] Information pertaining to coal seams, test borings, core samples, or soil samples in [permit] applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected. [; and]

[(b) Information in permit applications which pertains only to the analysis of the chemical and physical properties of the coal to be mined (excepting information regarding mineral or elemental contents of such coal, which are potentially toxic in the environment) shall be kept confidential and not made a matter of public record.]

[(2) The cabinet shall provide for procedures to maintain information required to be kept confidential under subsection (1) of this section separately from other portions of the permit application. This information shall be clearly identified as confidential by the applicant and submitted separately from other portions of the application.]

(3) Confidentiality. The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information. Such information shall be clearly identified by the applicant and submitted separately from the remainder of the application. Where a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:090. Confidential information is limited to the following:

(a) Information that pertains only to the

analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;

(b) Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979.

Section 13. Department Review of [Permit] Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1), of this regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

(2)(a) [(1)] Administrative [Initial] completeness determination. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative [initial] completeness of the application. If the application is determined to be incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies which render the application incomplete. The applicant may submit supplemental information to correct the identified deficiencies for a period of ten (10) [cabinet] working days after the applicant's receipt of the initial notice of incompleteness. If, after [such] ten (10) working days, the cabinet determines that the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) [(a)] A determination by the cabinet that the application is administratively [initially] complete shall be construed to mean that the application contains the major elements required by KRS Chapter 350 and Title 405, Chapters 7 through 24 which are necessary to allow meaningful review of the application by the cabinet. An application shall not be deemed administratively [initially] complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination of administrative [initial] completeness shall not be construed to mean that the application is complete in every detail, nor shall it be construed to mean that any aspect of the application is technically sufficient or approvable.

[(b) For applications submitted under Section 2(2)(f)2 of this regulation, this subsection applies at the time of submission of the complete application, but not at the time of submission of a substantially complete application. Also, the time limits for cabinet action under this subsection shall not apply to applications submitted under Section 2(2)(f)2 of this regulation due to the large number of such applications which will be submitted in a short period of time. The cabinet will conduct the completeness determination for such applications as expeditiously as possible.]

(3) [(2)] Processing of complete application. Within the time periods set forth in Section 16 of this regulation, the cabinet shall either:

(a) Notify the applicant of the cabinet's decision to issue or deny the application; or

(b) Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) [(3)] If the cabinet determines from either the lists submitted as part of the application under 405 KAR 8:030, Section 3(3) or 405 KAR 8:040, Section 3(3), or from other available information, that any surface coal mining operation owned or controlled by the applicant is currently in violation of any law, rule, or regulation of the United States or any state law, rule, or regulation enacted pursuant to federal law, rule, or regulation, pertaining to air or water environmental protection, or of any provision of SMCRA (P.L. 95-87) or KRS Chapter 350, and regulations promulgated pursuant thereto, the cabinet shall require the applicant, before the issuance of the permit, to either:

(a) Submit to the cabinet proof which is satisfactory to the cabinet and other agencies which have jurisdiction over such violation, that the violation has been or is in the process of being corrected; or [:]

[1. Has been corrected; or]

[2. Is in the process of being corrected.]

(b) Establish to the cabinet that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. In this case, the permit shall contain a condition requiring that if the administrative or initial judicial hearing authority either denies a stay applied for in the appeal, or affirms the violation, then any surface coal mining operations being conducted under the permit shall be terminated unless and until the permittee complies with the provisions of paragraph (a) of this subsection. For loss of appeal on violations of laws or regulations of the United States or states other than Kentucky, operations shall be terminated under this paragraph only when the cabinet has actual, verified notice of the loss of appeal and the subsequent failure of the permittee to correct or begin correcting the violation; and such termination shall be set aside by the cabinet only when the cabinet has actual, verified notice that the permittee has corrected the violation or is in the process of correcting the violation.

(5) [(4)] No permit shall be issued if the cabinet determines that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of SMCRA (P.L. 95-87), [or] KRS Chapter 350, or Title 405 KAR, Chapters 7 through 24 of such nature, duration, and with such resulting

"irreparable damage to the environment" (as defined in 405 KAR 7:020) that indicates an intent not to comply with the provisions of SMCRA (P.L. 95-87), [or] KRS Chapter 350, or Title 405 KAR, Chapters 7 through 24. [Irreparable damage to the environment is defined as any damage to the environment, in violation of SMCRA (P.L. 95-87), KRS Chapter 350, or Title 405 KAR, Chapters 7 through 24, that cannot be corrected by actions of the applicant.] Before any final determination by the cabinet pursuant to this subsection the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:090. [Such hearing shall be conducted pursuant to 405 KAR 7:090.]

Section 14. Criteria for Application [Permit] Approval or Denial. No [permit or revision for an] application for a permit, revision (as applicable), or amendment of a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval [and made available to the applicant], that:

(1) The permit application is [accurate and] complete and accurate and in compliance with [and that] all requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 [have been complied with].

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and Title 405, Chapters 7 through 24 can be feasibly accomplished under the mining and reclamation plan contained in the application.

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact [general] area on the hydrologic balance has been made by the cabinet and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030; [and]

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she [has] made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit; [and]

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3); [and]

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5).

(5) The proposed operations will not adversely affect any publicly-owned parks or places included in the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4).

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required under 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2).

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)[(3)](a) of this regulation; or

(b) Made the demonstration required by Section 13(4)[(3)](b) of this regulation.

(8) The applicant has paid [submitted proof that] all reclamation fees from previous and existing operations as required by 30 CFR 870, or has entered into a payment schedule approved by OSM [have been paid].

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA (P.L. 95-87) or KRS Chapter 350 of such nature, duration, and with such resulting "irreparable damage to the environment" (as defined in 405 KAR 7:020) as to indicate an intent not to comply with the provisions of SMCRA (P.L. 95-87) or KRS Chapter 350.

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR Title 405, Chapters 16 and 18. [Surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area.]

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use.

(12) [(11)] The applicant can reasonably be expected to submit the performance bond or other equivalent guarantee required under Title 405, Chapter 10 prior to the issuance of the permit.

(13) [(12)] The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3.

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining.

[(13) The proposed postmining land use of the permit area has been approved by the cabinet in accordance with the requirements of 405 KAR 16:210 or 405 KAR 18:220.]

(15) [(14)] The cabinet has made all specific approvals required under Title 405, Chapters 16 through 20.

(16) [(15)] The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 USC Sec. 1531 et seq.).

(17) [(16)] The applicant has not forfeited any bond under KRS Chapter 350. When the applicant has forfeited such bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid such sum as the cabinet finds is adequate to reclaim such lands.

(18) [(17)] The applicant has not had a permit

revoked, suspended or terminated under KRS Chapter 350. If the applicant has had a permit revoked, suspended or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof satisfactory to the cabinet that such violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her.

(19) [(18)] The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property.

(20) [(19)] The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures as approved by the cabinet are incorporated into the permit application and the surface coal mining operation is jointly approved by all affected agencies as set forth under 405 KAR 24:040.

(21) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7 or 405 KAR 18:190, Section 5, the applicant has demonstrated, to the satisfaction of the cabinet, that the site of the operation is a previously mined area as defined in those sections.

Section 15. Criteria for Application [Permit] Approval or Denial Regarding Existing Structures. No application for a permit, [or] revision, or amendment which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information set forth in the complete application, that the provisions of 405 KAR 7:040, Section 4, are met.

Section 16. Application [Permit] Approval or Denial Actions. (1) The cabinet shall take action on [permit] applications within the following time periods as appropriate:

[(a) A complete application submitted to the cabinet under Section 2(2)(f)2 of this regulation shall be processed by the cabinet so that an application is approved or denied within eight (8) months after the date of primacy, in accordance with KRS 350.060(2).]

(a) [(b)] 1. Except as provided for in paragraph (b) [(c)] of this subsection, for a complete and accurate application submitted under Section 2(2)(a), (b), (d), and (e) of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application [shall be approved or denied] within sixty-five (65) working days after the notice of administrative completeness under Section 13(2) [(1)] of this regulation, except that periods of temporary withdrawal under Section 13(3) [(2)](b) of this regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) [(c)] of this subsection, for a complete and accurate application submitted under Section 2(2)(c) of this regulation of a major revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application [shall be approved or denied] within forty-five (45) working days after the notice of administrative completeness under Section 13(2) [(1)] of this regulation, except that periods of temporary withdrawal under Section 13(3) [(2)](b) of this regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application submitted under Section 2(2)(c) of this regulation for a minor revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application [shall be approved or denied] within fifteen (15) working days after the notice of administrative completeness under Section 13(2) [(1)] of this regulation, except that periods of temporary withdrawal under Section 13(3) [(2)](b) of this regulation shall not be counted against the fifteen (15) working-day period available to the cabinet.

(b) [(c)] In the event that the notice, hearing and conference procedures as mandated by KRS Chapter 350 and this Title prevent a decision from being made [issued] within the time periods specified in paragraph (a) [(b)] of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

[(d) Where an application submitted under Section 2(2)(f)2 of this regulation also contains, within the proposed permit area, new lands which are not covered by a valid interim program permit, that application shall be processed under paragraph (a) of this subsection.]

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities: [If a permit conference has been held under Section 11 of this regulation, the cabinet shall provide its written findings to the permit applicant and to each person who is a party to the conference, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.]

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county, and the chief executive officer of any municipality, in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and must include a description of the location of the permit area; and

(e) The field office director of the Office of Surface Mining Reclamation and Enforcement.

(3) If the application is denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial. [If no such permit conference has been held, the cabinet shall provide its written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating

the specific reasons therefor in the decision.]

[(4) The cabinet shall:]

[(a) Provide a copy of its decision to:]

[1. Each person and government official who filed a written objection or comment with respect to the application; and]

[2. The Regional Director of the Department of Surface Mining Reclamation and Enforcement together with a copy of any permit issued; and]

[(b) Publish a summary of its decision in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed surface coal mining and reclamation operations will be located.]

(4) [(5)] If the cabinet decides to approve the application, it shall require that the applicant file the performance bond [or provide other equivalent guarantee] before the permit is issued, in accordance with the provisions of Title 405, Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed surface coal mining and reclamation operations will be located.

[(6) Within ten (10) days after the issuance of a permit, including the filing of the performance bond or other equivalent guarantee which complies with Title 405, Chapter 10, the cabinet shall notify the city or county in which the area of land to be affected is located that a permit has been issued and shall describe the location of the lands within the permit area.]

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet only if:

(a) The application is complete and accurate [full and complete] for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need [of the operation, and this need is] confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions of the time for commencement of these operations, upon receipt of a written statement showing that such extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet under this subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this regulation; Section 3 of 405 KAR 7:060; Sections 4, 6, and 7 of 405 KAR 8:050; and Title 405, Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall be deemed to constitute knowledge and acceptance of the conditions set forth in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter whether or not such conditions are set forth in the permit.

(1) General.

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and Title 405, Chapters 7 through 24; and

(b) Except to the extent that the cabinet otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the approved application; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted under 405 KAR 8:030 or 405 KAR 8:040 and authorized [approved] for the term of the permit; and which are subject to the performance bond [or other equivalent guarantee] in effect pursuant to Title 405, Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to: [The permittee shall allow the authorized representatives of the Secretary of the Interior, including but not limited to, inspectors and fee compliance officers, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to:]

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection when the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including, but not limited to:

1. Any accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of such failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by Title 405, Chapters 16 through 20, and which prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

2. Utilizing any methods specified in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and Title 405, Chapters 16 through 20, in accordance with the provisions of KRS Chapter 350[, Section 14(13),] and Title 405, Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter.

Section 19. [Department] Review of [Outstanding] Permits. (1)(a) The cabinet shall review each permit issued [and outstanding] under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7. Issued [and outstanding] permits will be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) After the review required by subsection (1) of this section, or at any time [this review], the cabinet may, by order, require [reasonable] revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and Title 405, Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:090.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations described in the existing application and approved under the current permit.

(b) When a revision is required by an order issued under Section 19 of this regulation.

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required under Title 405, Chapters 7 through 24.

(2) Major revision.

(a) A revision is a major revision if the proposed change is of such scope and nature that the cabinet determines that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall include, but shall not be limited to:

1. Changes in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. Variances to approximate original contour requirements;

4. Construction or relocation of roads, where such construction or relocation could adversely affect the interests of persons other than the surface owner;

5. Changes which may adversely affect significant fish and wildlife habitats or endangered species;

6. Proposed experimental practices;

7. Changes which may cause major impacts on the hydrologic balance;

8. Incidental boundary revisions that affect new watersheds;

9. Incidental boundary revisions that include diversions of perennial streams;

10. Incidental boundary revisions that include new areas from which coal will be removed, provided that such revisions shall be limited to ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Major revisions shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) [(18)] through (21) [(15)]; 15; 16; 18; and 24 of this regulation; and shall be submitted on forms prescribed by the cabinet. In addition to the requirements of Section 8(5) of this regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) All revisions which are not determined by the cabinet to be major revisions are minor revisions. Minor revisions shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), [(8),] (10) through (16), (19) [(18)] through (21) [(15)]; 15; 16(1) through (4) [, (3), (4)(a), (5)]; 18; and 24 of this regulation; and shall be submitted on forms prescribed by the cabinet.

(b) If the cabinet determines that a proposed minor revision is actually a major revision during the administrative [initial] completeness determination under Section 13 of this regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons, if any, that the cabinet determines could have an interest that may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(4) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved under this section.

(5) Fees. [Prior to July 15, 1982,] Applications for major and minor revisions shall

include a basic fee of $375 [250]. [Prior to July 15, 1982,] If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of seventy-five (75) [fifty (50)] dollars per acre, or fraction thereof, shall be included with the application, except that no acreage fee shall be required for surface areas overlying underground workings which are not affected by surface operations and facilities. [On and after July 15, 1982, the above amounts shall be increased to $375 and seventy-five (75) dollars respectively.]

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit. [upon expiration of the term of the permit, in accordance with subsections (2) and (4) of this section. Permit renewal shall not include approval for extension of the permit area beyond the boundaries of the current permit.]

[(2) Complete applications for renewal.]

(2) [(a)] Contents of renewal applications. [Complete] Applications for renewal of permits shall be submitted [made] within the time prescribed by Section 2(2)(b) of this regulation. Renewal applications shall be in a form and with content as required by the cabinet and in accordance with this section, and shall include at a minimum:

(a) [1. A statement of] The name and address of the permittee, the term of the renewal requested and [,] the permit number[, and a description of any changes to the matters set forth in the original application for a permit or prior permit renewal];

(b) [2.] A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this regulation;

(c) [3.] Evidence that liability insurance under 405 KAR 10:030, Section 4, will be provided by the applicant for the proposed period of renewal;

(d) A renewal fee of $375;

[4. Prior to July 15, 1982, a fee of $250. On and after July 15, 1982, a fee of $375.]

(e) Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional revised or updated information which may be required by the cabinet.

[(b) Processing and review of renewal applications.]

(3) [1.] Applications for renewal shall be subject to the requirements of Sections 8 through 11, 13 and 16 of this regulation.

[2. Before finally acting to grant the permit renewal, the cabinet shall require any additional performance bond needed by the permittee to comply with the requirements of subsection (4)(a)4 of this section, to be filed with the cabinet.]

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this regulation.

(5) [(3)] Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 17 of this regulation.

(6) [(4)] Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that [, upon the basis of a complete application for renewal and completion of all procedures required under subsection (2) of this section, issue a renewal of a permit, unless it is established and written findings by the cabinet are made that]:

1. The terms and conditions of the existing permit are not being satisfactorily met; [or]

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and Title 405, Chapters 7 through 24; [or]

3. The requested renewal substantially jeopardizes the applicant's [operator's] continuing responsibility to comply with KRS Chapter 350 and Title 405, Chapters 7 through 24 on existing permit areas; [or]

4. The applicant [operator] has not provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to Title 405, Chapter 10; [or]

5. Any additional revised or updated information required by the cabinet has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, [and] to any persons who were parties to any informal conference held on the permit renewal and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest which is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review set forth in Section 24 of this regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General [Approval required]. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this Title shall be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall: [Obtaining approval:]

(a) Provide a complete application, on forms provided by the cabinet, for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided: [Any person seeking to succeed by transfer, assignment, or sale to the rights granted by a permit issued under this Title shall, prior to the date of

such transfer, assignment or sale:]

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed asction requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10;

4. Applicable waivers in accordance with 405 KAR 24:040, Section 2(5). Unless the waivers originally submitted with the permit application or subsequent revisions or amendments stipulate that they are transferable, new waviers must be executed in favor of the proposed successor. If such waivers are not obtained, the successor may only conduct reclamation operations within the area previously exempted by waiver that were disturbed by the original permittee and may not extract coal within this area; and

5. A processing fee of $375.

[1. Obtain performance bond coverage for the permit area by: obtaining transfer of the original bond; providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; or such other methods as would provide that reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee; and]

[2. Provide the cabinet with an application for approval of such proposed transfer, assignment, or sale, including: a fee of $250 for applications submitted prior to July 15, 1982, a fee of $375 for applications submitted on and after July 15, 1982; the name and address of the existing permittee; the name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent; for surface mining activities the same information as is required by 405 KAR 8:030, Sections 2, 3, 4, 5(3), 7, and 8, for applications for new permits for those activities; or for underground mining activities, the same information as is required by 405 KAR 8:040, Sections 2, 3, 4, 5(3), 7, and 8, for applications for new permits for those activities.]

[3. Obtain the written approval of the cabinet for transfer, assignment, or sale of rights, according to paragraph (c) of this subsection.]

(b)[1.] Advertise [The person applying for approval of such transfer, assignment or sale of rights granted by a permit shall 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 in which the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the [and particular] geographic location of the permit, and the address to which written comments may be sent under subsection (3) of this section [subparagraph 2 of this paragraph].

[2. Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, state or federal government agency may submit written comments on the application for approval to the cabinet, within fifteen (15) days from the date of publication of the advertisement.]

(c) Obtain sufficient performance bond coverage which will ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred. [The cabinet may, upon the basis of the applicant's compliance with the requirements of paragraphs (a) and (b) of this subsection, grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that:]

[1. The person seeking approval would be eligible to receive a permit in accordance with the criteria specified in Section 14 of this regulation.]

[2. The applicant has, in accordance with paragraph (a)1 of this subsection, submitted a performance bond or other guarantee as required by Title 405, Chapter 10 and at least equivalent to the bond or other guarantee of the original permittee; and]

[3. The applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until it has obtained a new permit in accordance with this chapter as required in subsection (3) of this section.]

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement. [Requirements for new permits for persons succeeding to rights granted under a permit.]

[(a) A successor in interest to a permittee who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee.]

[(b) Pursuant to subsection (2)(c)3 of this section, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall:]

[1. Make application for a new permit under this chapter, if the change involves conducting operations outside the original permit area; or]

[2. Make application for a revised permit under Section 20 of this regulation.]

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor: [Proof of transfer, sale or assignment of rights. The successor in interest shall submit proof of the execution of the transfer, sale or assignment of rights within fifteen (15) days following execution of the agreement between the prior permittee and the successor in interest.]

(a) Is eligible to receive a permit in accordance with the criteria specified in Section 14 of this regulation;

(b) Has submitted a performance bond, in accordance with Title 405, Chapter 10, which will ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred, and which is at least equivalent to the bond of the existing permittee;

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets any other requirements specified by the cabinet **in order to ensure compliance with**

KRS Chapter 350 or KAR Title 405, Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice described in subsection (5), the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of such proof, the cabinet will reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted under a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. However, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) [(5)] Release of bond liability. The cabinet may release the prior permittee from bond liability on the permit area provided that the successor in interest has filed a performance bond satisfactory to the cabinet, has received written approval of the cabinet for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under this Title for reclamation of the areas affected by all prior permittees.

[(6) Interim program permits. The procedures of this section, including prior approval, public notice and comment, issuance of approval of transfer, sale or assignment of rights, submission of proof of execution of the agreement, and release of bond liability, shall apply to successors in interest to a valid interim program permit. However, the application content, performance bond requirements, and criteria for approval shall be modified by the cabinet to be consistent with the requirements of the interim program.]

Section 23. Amendments. Except for incidental boundary revisions, no extensions to an area covered by a permit can be approved under Section 20 (permit revisions) or Section 21 (permit renewals) of this regulation[; revisions and renewals]. All such extensions must be made by application for another permit. However, if the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet may so amend the original permit provided that the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits under this Title.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:090.

(2) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall:

(a) Have the right to judicial review as provided in KRS 224.085 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) Have the right to an action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits specified in KRS Chapter 350 or Title 405, Chapters 7 through 24.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 13, 1988
FILED WITH LRC: September 14, 1988 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 10:030. Types, terms and conditions of performance bonds and liability insurance.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.100, 350.110, 350.465

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.151, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to specify types, terms, and conditions for performance bonds and liability insurance. This regulation sets forth the various types and conditions which the cabinet will accept in satisfaction of the bonding requirements. This regulation sets forth that bonds shall be payable to the cabinet and other conditions. This regulation specifies certain alternative types of bonds, in addition to the surety bond, and the conditions upon which the cabinet will accept them. This regulation specifies the terms and conditions of liability insurance.

Section 1. Types of Performance Bond. (1) The cabinet shall approve performance bonds of only those types which are set forth in this section.

(2) The performance bond shall be either:

(a) A surety bond;

(b) A collateral bond; [or]

(c) A combination of the above [these] bonding types; or

(d) Bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and 350.700 through 350.755). [A bond filed pursuant to the Kentucky bond pool in accordance with 405 KAR 10:200.]

Section 2. Terms and Conditions of Performance

Bond. (1) The performance bond shall be in an amount determined by the cabinet as provided in 405 KAR 10:020, Sections 1 and 2.

(2) The performance bond shall be payable to the cabinet [as a penal sum].

(3) The performance bond shall be conditioned upon faithful performance of all of the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 and the conditions of the permit and shall cover the entire permit area or such incremental area as the cabinet has approved pursuant to 405 KAR 10:010, Section 3(2).

(4) The duration of the bond shall be for a time period provided in 405 KAR 10:020, Section 3.

(5) Surety bonds shall be subject to the following conditions:

(a) The cabinet shall not accept the bond of a surety company unless the bond shall not be cancelable by the surety at any time for any reason including, but not limited to, nonpayment of premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for permitted lands not disturbed [affected] may be cancelled with the written approval of the cabinet, provided the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to the proposed cancellation. Such notice shall be by certified mail. Cancellation shall not be effective for lands subject to bond coverage which are affected after receipt of notice, but prior to approval by the cabinet. The cabinet may approve such cancellation only if a replacement bond has been filed by the permittee, or if the permit area has been reduced by revision to the extent that the remaining bond amount, after cancellation, is sufficient [the permit has been revised so that the surface coal mining operations approved under the permit are reduced to the degree necessary] to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with 405 KAR 10:020 [and the remaining performance bond liability]. The cabinet shall advise the surety, within thirty (30) days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

(b) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(c) [The bond shall provide that:]

1. The surety shall [will] give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business.

2. In the event the surety becomes unable to fulfill its obligations under the bond for any reason, the surety shall promptly provide written notice [shall be given promptly] to the permittee and the cabinet.

3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without proper bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the permittee of responsibility under the permit or the surety of liability on its bond. [in violation of 405 KAR 10:010, Section 2(1).] The cabinet shall issue a notice to the permittee specifying [of noncompliance against any permittee who is without bond coverage. The notice shall specify] a reasonable period to replace bond coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable bond is posted. [During this period, the cabinet shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit. Such notice of noncompliance, if abated within the period allowed, shall not be counted as a notice of noncompliance for purposes of determining a "pattern of violation" under 405 KAR 7:090 and need not be reported as a past notice of noncompliance in permit applications under KRS Chapter 350 and Title 405, Chapters 7 through 24. If such a notice of noncompliance is not abated in accordance with the schedule, an order for cessation and immediate compliance shall be issued.]

(d) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth of Kentucky.

(6) Collateral bonds may include cash deposits with the cabinet, certificates of deposit, and letters of credit. Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(a) The cabinet or its authorized agent shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in this chapter.

(b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its authorized agent in writing, and the assignment evidenced on the books of the bank issuing such certificates.

(c) The cabinet shall not accept an individual certificate of deposit unless it is issued by a FDIC or FSLIC insured financial institution, and in no event shall the cabinet accept [for] a denomination in excess of the maximum insurable amount as determined by FDIC and FSLIC.

(d) The cabinet shall require the issuer of certificates of deposit to waive all rights of setoff or liens which it has or might have against those certificates.

(e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the cabinet at the time the collateral is offered.

(f) [(e)] The cabinet shall require the applicant to deposit sufficient amounts of certificates of deposit, so as to assure that the cabinet will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this chapter.

(7) Letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the United States. Any letter of credit issued by a non-Kentucky lending institution must be confirmed by an approved Kentucky lending institution.

(b) Letters of credit shall be irrevocable.

(c) The letter must be payable to the cabinet upon demand and receipt from the cabinet of a notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to terminate the letter on its expiration date, the cabinet may draw upon demand.

(d) [The letter of credit shall provide that:]

1. The issuer shall [will] give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business;

2. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the cabinet;

3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit. [in violation of 405 KAR 10:010, Section 2(1).] The cabinet shall issue a notice to the permittee specifying [of noncompliance against any permittee who is without bond coverage. The notice shall specify] a reasonable period to replace bond coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable bond is posted. [During this period, the cabinet shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit. Such notice of noncompliance, if abated within the period allowed, shall not be counted as a notice of noncompliance for purposes of determining a "pattern of violation" under 405 KAR 7:090 and need not be reported as a past notice of noncompliance in permit applications under KRS Chapter 350 and Title 405, Chapters 7 through 24. If such a notice of noncompliance is not abated in accordance with the schedule, an order of cessation and immediate compliance shall be issued.]

(8) When a permittee chooses to combine two (2) or more bonds for one (1) permit area or increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to be all parties, which sets forth the agreed distribution of bond amounts to be released or reduced under 405 KAR 10:040 and 405 KAR 10:020, Section 4, respectively. If no schedule is submitted, the cabinet may release equal percentages of each bond.

Section 3. Substitution of Bonds. (1) The cabinet may allow permittees to substitute existing surety or collateral bonds for equivalent [other] surety or collateral bonds, if the liability which has accrued against the permittee on the permit area or increment is transferred to such substitute bonds.

(2) The cabinet shall not release existing performance bonds until the permittee has submitted and the cabinet has approved acceptable substitute performance bonds. A substitution of performance bonds pursuant to this section shall not constitute a release of bond under 405 KAR 10:040.

(3) The cabinet may refuse to allow substitution of bonds if an action for revocation or suspension of the permit covered by the bond is pending or if there is a pending action for forfeiture of the bond.

Section 4. Terms and Conditions for Liability Insurance. (1) The applicant shall submit, as a part of the permit application at the time of bond submission, a certificate issued by an insurance company authorized to do business in Kentucky certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The certification shall be on a form prescribed by the cabinet. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate for all personal injury and property damage resulting from surface coal mining and reclamation operations, including damage caused by the use of explosives and damage to water wells. Minimum insurance coverage for bodily injury and property damage shall be $300,000 for each occurrence and $500,000 aggregate.

(2) The policy shall be maintained in full force during the term of the permit or any renewal thereof, and during the liability period necessary to complete all reclamation operations under Title 405, Chapters 7 through 24, until full bond release has been granted.

(3) The policy shall include a clause requiring that the insurer notify the cabinet whenever substantive changes are made in the policy, including any termination or failure to renew.

(4) In the event the insurer becomes unable to fulfill its obligations under the policy, notice shall be given immediately to the permittee and the cabinet.

(5) [(4)] Upon the incapacity of an insurer by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without insurance coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the insurer of liability on its policy. [in violation of this section.] The cabinet shall issue a notice to the permittee specifying [of noncompliance against any permittee who is without insurance coverage. The notice shall specify] a reasonable period to replace such coverage, not to exceed ninety (90) days. If an adequate insurance coverage is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal

processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable insurance coverage has been posted. If an acceptable insurance coverage has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable insurance coverage is posted. [During this period, the cabinet shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit. Such notice of noncompliance, if abated within the period allowed, shall not be counted as a notice of noncompliance for purposes of determining a "pattern of violation" under 405 KAR 7:090 and need not be reported as a past notice of noncompliance in permit applications under KRS Chapter 350 and Title 405, Chapters 7 through 24. If such a notice of noncompliance is not abated in accordance with the schedule, an order for cessation and immediate compliance shall be issued.]

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

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
STATUTORY AUTHORITY: 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 or [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; **except that for surety bonds or bonds secured by a letter of credit: [.]**

(a) In no event shall the cabinet take any action to forfeit a surety bond or bond secured by a letter of credit under this circumstance until reclamation phase I and II monies have been released and the five (5) year liability period has expired; and

(b) [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
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 16:080. Diversions.

RELATES TO: KRS 350.085, 350.100, 350.405, 350.420, 350.465
STATUTORY AUTHORITY: 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, **nondegradable** 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, **nondegradable** 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
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 16:100. Permanent and temporary impoundments.

RELATES TO: KRS 350.100, 350.420, 350.455, 350.465
STATUTORY AUTHORITY: 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)(a) 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.

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

(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 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.

3. Where an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph

2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(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.]

(6) [(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.

(7) [(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 (1)(b) [(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.

(8) [(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.

(9) [(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. The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change.

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

(10) [(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.

(11) [(12)] Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment[s] shall immediately notify [promptly inform] the department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services. [cabinet of the finding and of] The permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the permittee, the cabinet shall be notified, and [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
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 16:110. Surface and groundwater monitoring.

RELATES TO: KRS 350.100, 350.405, 350.420, 350.465
STATUTORY AUTHORITY: 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 **reduction of the sampling frequency** [modifications of the monitoring requirements] for surface **or** [and] groundwater, except as [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 **thirty (30) months after Phase I bond release** [two (2) years after completion of active mining] on the permit. **The cabinet shall not approve a sampling frequency of less than once per year.**

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.

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
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(Amended After Hearing)

405 KAR 16:190. Backfilling and grading.

RELATES TO: KRS 350.020, 350.093, 350.100, 350.405, 350.410, 350.450, 350.465

STATUTORY AUTHORITY: 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) Are not substitutes for compliance with approximate original contour requirements;

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

(e) [(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.

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405 KAR 18:080. Diversions.

RELATES TO: KRS 350.085, 350.100, 350.151, 350.405, 350.420, 350.465
STATUTORY AUTHORITY: 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, nondegradable 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, nondegradable 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
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 18:100. Permanent and temporary impoundments.

RELATES TO: KRS 350.100, 350.151, 350.420, 350.455, 350.465
STATUTORY AUTHORITY: 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)(a) 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.

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

(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.

3. Where an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(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.]

(6) [(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.

(7) [(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 (1)(b) [(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.

(8) [(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.

(9) [(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 **design and** 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. **The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change.**

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

(10) [(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.

(11) [(12)] Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment[s] shall **immediately notify** [promptly inform] the **department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services,** [cabinet of the finding and of] The **permittee shall immediately implement** emergency procedures formulated for public protection and remedial action. If adequate **emergency** procedures cannot be formulated or implemented **by the permittee,** the cabinet shall be notified, **and** [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
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 18:110. Surface and groundwater monitoring.

RELATES TO: KRS 350.100, 350.151, 350.405, 350.420, 350.465,
STATUTORY AUTHORITY: 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 **reduction of the sampling frequency** [modifications of the monitoring requirements] for surface or [and] groundwater, except as [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, and [;] 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 **thirty (30) months after Phase I bond release** [two (2) years after completion of active mining] on the permit. **The cabinet shall not approve a sampling frequency of less than once per year.**

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
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 18:190. Backfilling and grading.

RELATES TO: KRS 350.020, 350.093, 350.100, 350.151, 350.405, 350.410, 350.450, 350.465

STATUTORY AUTHORITY: 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) Are not substitutes for compliance with approximate original contour requirements;

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

(e) [(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: September 13, 1988
FILED WITH LRC: September 14, 1988 at 11 a.m.

TRANSPORTATION CABINET
Department of Highways
(Amended After Hearing)

603 KAR 5:115. Coal-haul highway system; reporting requirements.

RELATES TO: KRS 42.455(8), 177.977, 177.9771
STATUTORY AUTHORITY: 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, scrubber sludge, burned coal waste (red dog), 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: September 6, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

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

704 KAR 20:240. Speech and communication disorders; teacher's provisional certificate.

RELATES TO: KRS 161.020, 161.025, 161.030
STATUTORY AUTHORITY: 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: September 14, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

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

704 KAR 20:460. Examination prerequisites for principal certification.

RELATES TO: KRS 161.020, 161.027, 161.030
STATUTORY AUTHORITY: 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:

		Eff. Prior to 1/1/89	Eff. on 1/1/89
(1)	NTE Core Battery Tests		
(a)	Communication skills	643	646
(b)	General knowledge	637	643
(2)	NTE Specialty Test of Educational Administration and Supervision	540	540
(3)	Kentucky Specialty Test of Instructional and Administrative Practices.	85% correct responses	85% 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: September 14, 1988
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EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Amended After Hearing)

707 KAR 1:051. Exceptional children's programs.

RELATES TO: KRS 157.200 to 157.290, 157.360
STATUTORY AUTHORITY: 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.

(a) 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.

(b) Local boards of education shall provide written notification of the availability of extended school year programs to the parents of students with handicaps.

(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: September 14, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Amended After Hearing)

707 KAR 1:110. Kentucky School for the Blind; admission policies.

RELATES TO: KRS 167.150, 20 U.S.C. §1415
STATUTORY AUTHORITY: 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; however referrals are only 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, as **appropriate**. 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 **appropriate** [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 **making transfers or** 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. These assessments may include but are not limited to the following:

(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 initial contact person [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: September 14, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

LABOR CABINET
Department of Workers' Claims
Workers' Compensation Board
(Amended After Hearing)

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. A qualified rehabilitation provider is a case coordinator and not a direct provider of therapeutic services.

(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, or accredited through the Commission on Accreditation of Rehabilitation Facilities to provide [inpatient physical] rehabilitation services [pursuant to 902 KAR 20:016 or 902 KAR 20:240].

(5) Out-of-state rehabilitation facilities or institutions providing rehabilitation services to Kentucky workers' compensation claimants must meet similar licensure or accreditation requirements.

(6) A facility or institution which has been listed in the Directory of Qualified Rehabilitation Facilities but loses any required license or accreditation shall immediately be removed from the Directory of Qualified Rehabilitation Facilities.

(7) The Directory of Qualified Rehabilitation Facilities lists those facilities which met certain minimal licensure or accreditation standards to provide rehabilitation services. They have applied to be listed as resources to which an injured employee may be referred by an administrative law judge on his own motion, or upon application of any party, for evaluation of the types of services needed to return him to a remunerative occupation and for provision of rehabilitation services.

[(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 4. [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 5. [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 6. [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 7. [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.

(3) A qualified rehabilitation provider who does not list any workers' compensation claimants served in two (2) consecutive requests for registration renewal shall be removed from the Registry of Qualified Rehabilitation Providers.

Section 8. [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 9. [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 10. [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 11. [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 12. [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 13. [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 14. [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 15. [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 16. [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 17. [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 18. [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 19. [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 20. [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: August 25, 1988
FILED WITH LRC: August 26, 1988 at 10:30 a.m.

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
(Amended After Hearing)

806 KAR 3:130. Liability insurance closed claims reporting.

RELATES TO: KRS 304.3-245
STATUTORY AUTHORITY: 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 forty-five (45) [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. Insurers may submit reports on computer tape if they do so in accordance with instructions from the Commissioner of Insurance.

(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: September 1, 1988
FILED WITH LRC: September 2, 1988 at 9 a.m.

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
(Amended After Hearing)

806 KAR 3:140. Liability and health insurance statistical reports.

RELATES TO: KRS 304.3-315
STATUTORY AUTHORITY: 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. Page 1 and Part I of the report shall also be filed with the Legislative Research Commission on or before March 1 of each 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: September 1, 1988
FILED WITH LRC: September 2, 1988 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended)

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) Computer printouts of lists, computer printouts of mailing labels, and magnetic tapes:
(a) Agents:
1. General lines or life and health, $500.
2. General lines or life and health magnetic tape, $1,000.
3. All other lines, $100.
4. Listing for each ZIP code, $50.
5. Appointments (activity) of a specific agent, $5.
(b) Adjusters, consultants, managing general agents, solicitors, surplus lines brokers, and third party administrators, $100.
(c) Insurer directories:
1. All authorized insurers, $150.
2. Insurers by line of insurance, $100.
3. Appointments (activity) by a specific insurer, $50.
(d) Corporate or partnership agents:
1. Corporate or partnership agent directory, $150.
2. Corporate or partnership agents by line of insurance, $100.
3. Appointments (activity) of a specific corporation or partnership agent, $10.
(e) Other printouts or magnetic tapes not specified above, if the request is approved by the commissioner, $500.
(21) [(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: September 1, 1988
FILED WITH LRC: September 2, 1988 at 9 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Amended After Hearing)

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
STATUTORY AUTHORITY: 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.

Section 3. In accordance with the provisions of KRS 214.452, blood establishments as defined in KRS 214.450(2) shall test blood for those diseases for which tests are approved and required by the United States Food and Drug Administration.

C. HERNANDEZ, MD, MPH, Commissioner
HARRY J. COWHERD, MD, Secretary
APPROVED BY AGENCY: September 6, 1988
FILED WITH LRC: September 6 1988 at noon

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Amended After Hearing)

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
STATUTORY AUTHORITY: 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.]
(2) [(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 following pages)

C. HERNANDEZ, MD, MPH, Commissioner
HARRY J. COWHERD, MD, Secretary
APPROVED BY AGENCY: September 6, 1988
FILED WITH LRC: September 6, 1988 at noon

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 ☐

(8) Have you engaged in prostitution since 1977 or been the sex partner of a prostitute (male or female) within the last six months? Yes ☐ No ☐

(9) Have you ever had a positive blood test for HIV-2 or emigrated from an area such as sub-Saharan Africa or the islands located near those areas of Africa where sexual transmission of this virus between males and females believed to be common? 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 9/2/88

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	Home Phone	Work Phone	Today's Date	Date of Last Donation
	M F	( )	( )		

Temperature	Blood Pressure	Pulse	Weight	Hemoglobin	Serum Protein	Needle Tracks on Arms	Skin Disease on Arms
						Y N	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

PROPOSED AMENDMENTS RECEIVED THROUGH SEPTEMBER 15

UNIVERSITY OF KENTUCKY
College of Agriculture
Agriculture Experiment Station
(Proposed Amendment)

12 KAR 5:010. Licenses.

RELATES TO: KRS 260.775 to 260.845, 260.992
STATUTORY AUTHORITY: KRS 260.795 to 260.805
NECESSITY AND FUNCTION: The Director of the Agricultural Experiment Station, University of Kentucky is charged with the enforcement of KRS Chapter 260 to regulate milk buyers, milk testers and milk weighers and samplers. The function of the regulation is to license those who are adjudged and qualified as a milk buyer, tester or weigher and sampler.

Section 1. A current license to buy and a current license to test milk shall be prominently displayed (posted separately) in each buying place.

Section 2. A current license to weigh and sample milk in [cans or in] bulk tanks from producers shall be displayed at the buying place at which the licensee normally delivers milk. A second copy shall be carried by the licensee when in the act of weighing, sampling, or delivering producer's milk.

Section 3. All licenses issued under the authority of this law expire on June 30 of each year. They are required to be renewed on or before July 1 by mailing an application properly filled out and signed with required fee accompanying it. A notice to renew with application blank is sent out to each current license holder on or about June 15. In case such application blank is not received by June 25, the license holder is directed to write to U.K. Regulatory Services, Kentucky Agricultural Experiment Station, Lexington, Kentucky 40506, and request that one be sent. The renewal fee is shown on the application.

Section 4. In order that new operators may legally sample and weigh milk or sample and measure milk they <u>shall</u> [must] make application on a form furnished by the Experiment Station and the fee called for on the application be paid. Applicants will be issued a <u>ninety (90)</u> [sixty (60)] day temporary nonrenewable license with approved procedures for weighing (measuring) and sampling milk for pay purposes. Every <u>three (3)</u> [two (2)] months of the year all persons holding a temporary license will <u>attend a one (1) day training school and</u> take a written examination, given by U.K. Regulatory inspectors and if completed successfully will be issued a permanent license. Temporary licenses held by samplers and weighers who fail to present themselves for a written examination after due notification or found unqualified will have their license revoked after which they cannot legally sample and weigh milk for producers.

C. ORAN LITTLE, Director
APPROVED BY AGENCY: August 31, 1988
FILED WITH LRC: September 6, 1988 at 4 p.m.
PUBLIC HEARING: Statutory Authority to KRS 13A.270 a public hearing on this administrative regulation will be held at 1:30 p.m., October 21, 1988, 102 Scovell Hall, Division of Regulatory Services, University of Kentucky, Lexington, Kentucky. Those interested in attending this hearing shall, no later than October 16, 1988 contact the following in writing: Mr. Ed Troutman, Coordinator, Creamery License Program, Division of Regulatory Services, 102 Scovell Hall, University of Kentucky, Lexington, Kentucky 40546-0064.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: E. C. Troutman, Creamery Coordinator
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: N/A
TIERING: Was tiering applied? No. This is not a new regulation but an amended regulation. The amendments give all entities a longer time to learn the job before a one day training school and a written examination. All milk buyers, testers, weighers and samplers shall be treated alike since there is only one class of regulated entities and different treatment would raise constitutional questions. Therefore tiering is inappropriate. There is no savings of direct or indirect costs or savings to those affected. There is no known conflict, overlapping, or duplication of this administrative regulation. This regulation requires uniformity to all it regulates. Tiering would defeat the intent of this regulation.

UNIVERSITY OF KENTUCKY
College of Agriculture
Agriculture Experiment Station
(Proposed Amendment)

12 KAR 5:020. Testing.

RELATES TO: KRS 260.775 to 260.845, 260.992
STATUTORY AUTHORITY: KRS 260.800, 260.825
NECESSITY AND FUNCTION: The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS

Chapter 260 to regulate milk testers. The function of this regulation is to provide uniform standards, approved procedures, and equipment for analysis of milk components by licensed testers.

Section 1. The "Babcock Test," as described in "Methods of Analysis - Association of Official Analytical Chemists", 14th [13th] Edition, 1984 [1980] is declared an official method for use in Kentucky and shall be performed in accordance with procedures approved by the director or his agents for the analysis of milk fat.

Section 2. The "Milkotester" method, as described in "Methods of Analysis - Association of Official Analytical Chemists," 14th [13th] Edition, 1984 [1980] is declared an official method for use in Kentucky and shall be performed in accordance with procedures approved by the director or his agents for the analysis of milk fat.

Section 3. The "Infrared" method, as described in "Methods of Analysis - Association of Official Analytical Chemists," 14th [13th] Edition, 1984 [1980] is declared an official method for use in Kentucky and shall be performed in accordance with procedures approved by the director or his agents for the analysis of milk fat, protein, lactose, and total solids components of raw milk. Solids not fat (SNF) to be determined as the difference between total solids and milk fat as described in [the most recent edition of] "Methods of Analysis - Association of Official Analytical Chemists," 14th Edition, 1984.

Section 4. (1) A person shall [must] satisfactorily pass an examination issued by the director or his agents on the Babcock method of milk fat analysis prior to becoming a licensed tester using the Babcock method.

(2) A person shall [must] satisfactorily pass an examination issued by the director or his agents on both the Babcock and Milkotester methods of milk fat analysis prior to becoming a licensed tester for the Milkotester method.

(3) A person shall [must] satisfactorily pass an examination issued by the director or his agents on both the Babcock and "Infrared" methods of analysis prior to becoming a licensed tester for the "Infrared" method of component analysis.

(4) In order that new operators may legally test until such time as they may appear for examination, they may secure a temporary permit in lieu of license. To secure this permit it is necessary that application be made on the form furnished by the Agricultural Experiment Station and fee called for on the application form paid. Licenses will be issued to holders of permits who pass satisfactory examinations. Testers failing on their first examination may have their permits extended one (1) time only. Permits may be extended if a legitimate excuse for not appearing is received by the Agricultural Experiment Station within five (5) days after the date of the examination at which the holder was notified to appear. All other permits of testers notified for examination become null and void and their holders cannot legally test further.

Section 5. Each record sheet of milk fat tests results is required to be dated and signed by the licensed tester(s). If a book or sheet with columns for more than one (1) series of tests covering different periods of time is used, the licensed tester(s) is to date and sign each column immediately after tests recorded therein are finished. These original sheets are to be permanent records and are required to be kept on file with other records of weights and payments for twelve (12) months.

Section 6. Reference Methods. Milk buyers may purchase commercially prepared reference milk samples in lieu of making their own reference milk samples for the calibration of Milkotesters and Infrared milk analyzers for fat, protein, lactose, and total solid components of raw milk. Solids not fat (SNF) shall be determined as the difference between total solids and milk fat. Commercial laboratories preparing reference milk samples shall use only approved methods as listed below for each milk component.

(1) Reference methods approved by the director, or his agents, for milk fat analysis shall be the "Babcock" method and the "Mojonnier" method as described in [the most recent edition of] "Methods of Analysis - Association of Official Analytical Chemists," 14th Edition, 1984.

(2) Reference methods approved by the director, or his agents, for milk protein analysis shall be the "Kjeldahl" nitrogen method as described by [the most recent edition of] "Methods of Analysis - Association of Official Analytical Chemists," 14th Edition, 1984.

(3) The reference method approved by the director, or his agents, for milk lactose analysis shall be the "Polarimetric Method" as described by "Methods of Analysis - Association of Official Analytical Chemists, 14th [13th] Edition, 1984 [1980]."

(4) All Kentucky milk buying locations testing milk to determine milk producer payments shall [must] be licensed for and maintain the Babcock method of milk fat analysis as a back-up procedure in the event of instrument malfunction or failure to meet the required standards. It will also be necessary to calibrate Milkotester and Infrared milk analyzers by the Babcock method fat analysis in the absence of approved commercially prepared reference milk samples.

(5) The material incorporated by reference in this regulation is available for inspection during working hours at the Agricultural Experiment Station offices in Lexington, Kentucky.

Section 7. All licensed milk testers testing dairymen's milk for payment shall carry out the following procedures to maintain their testers license.

(1) Prepare four (4) milk fat control samples in the fat range of two (2) to six (6) percent by approved chemical methods and use the samples each day the indirect instrument is used for fat analysis to pay producers. Payment on other milk components in addition to milk fat require daily control samples.

(2) Indirect instruments used for milk component analysis to pay dairymen shall be calibrated monthly, using UK Regulatory Services prescribed form, and submit a copy to UK Regulatory Services.

(3) Test nine (9) milk samples each month for milk fat analysis and ship the results and

samples to the UK Regulatory Services laboratory in Lexington for fat analysis and comparisons.

(4) Submit a monthly milk fat testing schedule (days and hours) a month in advance to UK Regulatory Services unless your lab is open during normal working hours of 8 a.m. to 5 p.m. Monday thru Friday.

C. ORAN LITTLE, Director

APPROVED BY AGENCY: August 31, 1988

FILED WITH LRC: September 6, 1988 at 4 p.m.

PUBLIC HEARING: Statutory Authority to KRS 13A.270 a public hearing on this administrative regulation will be held at 1:30 p.m., October 21, 1988, 102 Scovell Hall, Division of Regulatory Services, University of Kentucky, Lexington, Kentucky. Those interested in attending this hearing shall, no later than October 16, 1988 contact the following in writing: Mr. Ed Troutman, Coordinator, Creamery License Program, Division of Regulatory Services, 102 Scovell Hall, University of Kentucky, Lexington, Kentucky 40546-0064.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: E. C. Troutman, Creamery Coordinator

(1) Type and number of entities affected: N/A

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

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

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

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

(6) Any additional information or comments: N/A

TIERING: Was tiering applied? No. This is not a new regulation but an amended regulation. The amendments are an update on methods of analysis that may be used in milk component analysis by milk buyers. All licensed milk testers shall be treated alike since there is only one class of regulated entities and different treatments would raise constitutional questions. Therefore tiering is inappropriate. There is no savings of direct or indirect costs or savings to those affected. There is no known conflict, overlapping, or duplication of this administrative regulation. This regulation requires uniformity to all it regulates. Tiering would defeat the intent of this regulation.

UNIVERSITY OF KENTUCKY
College of Agriculture
Agriculture Experiment Station
(Proposed Amendment)

12 KAR 5:030. Test samples.

RELATES TO: KRS 260.775 to 260.845, 260.992

STATUTORY AUTHORITY: KRS 260.785

NECESSITY AND FUNCTION: The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk buyers, milk testers and milk weighers and samplers. The purpose of this regulation is to establish guidelines and approved procedures to insure accurate fresh [or composite] milk samples for milk component testing.

Section 1. Buyers of milk received from producers' farm bulk tanks with fresh samples taken during any twenty-four (24) hour period shall [must] observe the following:

(1) Samples will be collected from every producers' shipment of milk and delivered to the buyer.

(2) Individual tank truck load samples shall [must] be obtained whenever producer samples are used for milk fat tests.

(3) Samples shall [must] be collected in a clean, dry, sanitized container. Four (4) ounces of milk shall be obtained with at least one (1) inch air space in top of a six (6) ounce container. A minimum of one (1) ounce shall be obtained in smaller containers. Samples shall be kept between thirty-three (33) degrees to forty (40) degrees Fahrenheit and in an upright position until they are tested for milk fat.

(4) Fresh milk samples shall [must] be held for twenty-four (24) hours for retest following the last scheduled date for testing.

(5) Dairymen's milk samples used for payment shall be handled only by licensed milk haulers or licensed milk testers. Anyone handling these milk samples for shipping, picking up or transferring them in any manner must attend a hauler training school for a haulers license or be a licensed tester.

[Section 2. (1) With composite samples use one (1) corrosive sublimate (mercuric chloride or bichloride of mercury) tablet containing not less than 0.3 gram (4.6 grains) of mercuric chloride per tablet, or some equally effective preservative, in each eight (8) ounce composite sample bottle. Three-tenths (0.3) gram of mercuric chloride is sufficient preservative to keep a 140 ml. composite sample of milk for four (4) weeks. Composite samples shall be tested immediately after the compositing period ends. At plants receiving milk from a large number of patrons, arrangements must be made to care for and test all of the samples before they deteriorate sufficiently to affect the accuracy of the tests. Keeping all composite samples (except those being tested during the current day) at fifty (50) degrees Fahrenheit or under is required. On the first day of the compositing period, after the portion for that day has been put in the bottle, and after allowing for preservative to soften, the bottle shall be given a slight rotary motion to color the milk.]

[(2) A minimum of ten (10) ml. shall be taken from each producer's delivery of milk. The quantity removed shall be the same for each

day's production during a compositing period. The total composite sample at the time of testing shall be not less than 100 ml. If for example, a producer delivers milk only two (2) days during a compositing period, then a minimum sample of fifty (50) ml. must be taken on each of the two (2) days.]

[(3) Composite sample bottles shall have a capacity of not less than eight (8) ounces, be free from cracks, and be tightly fitted with an approved rubber stopper.]

[(a) Each bottle shall be identified with a legible mark of identification.]

[(b) Every sample bottle shall be clean and dry before the addition of a preservative and maintained in such a manner as to prevent the accumulation of moisture which may dilute the sample of milk.]

[(c) Each milk plant shall be provided with at least two (2) complete sets of sample bottles.]

[Section 3. When a dipper, thief, or similar manual device is used, it must be rinsed once prior to use with the milk which is to be sampled. When an automatic sampler is used, it must be operated in accordance with the manufacturer's instructions, and must include the correct vacuum, no leaks in the line and proper slope in lines to permit prompt drainage. The sampler and weigher must operate the automatic sampler so the milk fills the dome to the line marked thereon for this purpose (about one-half (1/2) full). It is possible for the automatic sampler to cause the check on mixing accuracy to be unsatisfactory.]

[(2) The composite samples shall be stored away from strong light in a clean sanitary cabinet maintained at a temperature between thirty-five (35) degrees and fifty (50) degrees Fahrenheit. The samples shall not be kept at room temperature for longer than one (1) hour each day during the compositing period.]

[(3) Place the sample bottles in tempering bath with the surface of the water slightly above the level of the milk in the bottles.]

[(4) The temperature of the bath should not exceed 110° Fahrenheit at the time of placing the cold samples in it. Shortly thereafter the temperature should be adjusted as the temperature of the milk rises, so that the final temperature of both bath and samples is 100° Fahrenheit. (Two (2) baths may be used, one (1) for heating and one (1) thermostatically controlled for holding at 100° Fahrenheit).]

[(5) Do not mix the milk in the sample bottles when at churning temperature (seventy (70) degrees to ninety (90) degrees Fahrenheit).]

[(6) Any sample which may become diluted with water must be discarded and a permanent record made of the date of accident and the identity of the sample.]

[(7) Any cream adhering to the sides of the bottle and the stopper must be reincorporated with the contents by gently rotating and inverting the bottle. A rubber policeman or nylon bristle brush may be used if preferred.]

[(8) (a) The composite sample, after reaching 100° Fahrenheit is mixed by pouring back and forth at least twice between the original sample bottle and a mixing container. The mixing container shall be drained at least fifteen (15) seconds prior to reuse.]

[(b) If the bottle is not over two-thirds (2/3) full, the sample may be mixed by shaking horizontally back and forth six (6) times through a distance of about six (6) inches within a period of three (3) seconds. Care must be used to avoid churning when this procedure is used. The sample for testing shall be pipetted immediately after mixing.]

[(9) Temperature of milk for pipetting. The temperature of the milk at the time of pipetting shall be 100° Fahrenheit.]

[(10) Pipetting. The tip of the milk pipette (calibrated to contain 17.6 ml of water at twenty degrees (20°) Centigrade) should be at a level approximately equal to one-half (1/2) the height of the milk in the sample bottle. The pipette is then filled until the topmost surface of the milk is even with the graduation mark on the pipette. The milk is then discharged into a test bottle by inserting the whole length of the long delivery tube of the pipette into the neck of the test bottle before releasing its contents. The lip of the test bottle must be vented to permit air to escape readily from the bottle, preferably by means of a grooved rubber washer at the base of the bulb of the pipette.]

[(11) When the charge has drained, usually about ten (10) to fifteen (15) seconds after free flow has stopped, blow out the last drop or remove the pipette from the test bottle with a quick upward movement in order to remove the last drop from the tip of the pipette. Two (2) pipettes used alternately may be advantageous.]

[(12) Composite milk samples must be held for seven (7) days following the last scheduled day for testing of all the producers' milk samples.]

C. ORAN LITTLE, Director
APPROVED BY AGENCY: August 31, 1988
FILED WITH LRC: September 6, 1988 at 4 p.m.
PUBLIC HEARING: Statutory Authority to KRS 13A.270 a public hearing on this administrative regulation will be held at 1:30 p.m., October 21, 1988, 102 Scovell Hall, Division of Regulatory Services, University of Kentucky, Lexington, Kentucky. Those interested in attending this hearing shall, no later than October 16, 1988 contact the following in writing: Mr. Ed Troutman, Coordinator, Creamery License Program, Division of Regulatory Services, 102 Scovell Hall, University of Kentucky, Lexington, Kentucky 40546-0064.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: E. C. Troutman, Creamery Coordinator
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative

regulation or government policy which may be in conflict, overlapping, or duplication: N/A

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

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

(6) Any additional information or comments: N/A

TIERING: Was tiering applied? No. This is not a new regulation but an amended regulation. The amendments are largely the deletion of a type of milk samples (composite) that is no longer used by the dairy industry. All milk buyers, testers, and haulers shall be treated alike since there is only one class of regulated entities and different treatment would raise constitutional questions. Therefore tiering is inappropriate. There is no known conflict, overlapping, or duplication of this administrative regulation. This regulation requires uniformity to all it regulates. Tiering would defeat the intent of this regulation.

UNIVERSITY OF KENTUCKY
College of Agriculture
Agriculture Experiment Station
(Proposed Amendment)

12 KAR 5:040. Sampling and weighing.

RELATES TO: KRS 260.775 to 260.845, 260.992
STATUTORY AUTHORITY: KRS 260.785
NECESSITY AND FUNCTION: The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk weighers and samplers. The purpose of this regulation is to establish procedures for milk weighers and samplers to use for accurate sampling and measuring of milk in farm bulk tanks.

Section 1. Each pickup of milk is required to be sampled and weighed (measured). Upon arrival at the farm the milk in the bulk tank may be measured at once if the agitator is not running. If the agitator is running, a sample may be obtained for milk fat testing first, after at least five (5) minutes of agitation. Measurement of milk can only be made after the milk surface in the farm tank becomes motionless.

Section 2. Bulk milk weighers and samplers shall use the following equipment in their milk sampling procedures:

(1) Sample rack and compartment on truck to hold one (1) sample for fat test for each patron, load samples, and other required samples.

(2) Need refrigerant to contain temperature of samples between thirty-three degrees (33°) and forty degrees (40°) Fahrenheit.

(3) Sample bags, tubes, bottles or vials thoroughly clean, dry leak-proof container holding at least one (1) four (4) ounces of milk plus one (1) inch air space.

(4) Sample dipper or other sampling devices of sanitary construction approved by the Cabinet [Department] for Human Resources. Shall hold one-fourth (1/4) of the required sample.

Section 3. Bulk milk weighers and samplers shall use the following procedures in measuring farm bulk milk:

(1) Any foam in the area of measurement shall [should] be gently moved to one (1) side with the measuring rod.

(2) The measuring rod shall [should] be clean, dry and free of fat before taking a reading. Rinse the measuring rod in clean warm (not hot) water and dry with a single service paper towel. Insert rod into the milk slowly and seat it firmly without pounding.

(3) Read the rod to the nearest graduation mark and the correct weight recorded as indicated on the conversion chart. A second check reading is required. It's a good practice to record both the dip stick reading and the weight from the conversion chart on the farm weight ticket.

(4) Any unusual condition, such as the tank not level, agitator out, etc. shall [must] be recorded on the weight ticket and should be reported to the buyer.

Section 4. Bulk milk weighers and samplers shall use the following procedures in sampling producers' farm bulk milk:

(1) Milk shall [must] be agitated sufficiently to obtain a homogeneous blend. A minimum of five (5) minutes of agitation is required to obtain a representative sample for milkfat testing out of farm tanks less than 1,000 gallon capacity. Farm tanks over 1,000 gallon capacity shall be agitated at least ten (10) minutes.

(2) To eliminate moisture and sanitizing solution, rinse dipper and/or other sampling devices at least twice with milk before taking samples.

(3) The bulk milk tank agitator shall [must] be turned on when pumping starts and immediately turned off when the level of milk reaches the top of the agitator. Do not start pumping the milk on to truck until sampling is completed. Take a total of four (4) ounces of milk if a six (6) ounce sample bag is used and at least one (1) ounce if a two (2) ounce container is used for producer samples.

(4) Each sample tube, bottle, vial, or plastic bag must be plainly, permanently labeled with identity of the producer and the date the sample was taken.

Section 5. Weight records are required to be made and accounted for in accordance with either subsections (1), (2) or (3) of this section:

(1) A separate record or ticket shall [must] be made for each "pickup" (may be duplicated). This ticket must show the amount of milk in pounds, the date, and the signature of the person who measured and sampled the milk. These tickets must be taken to the plant with the milk they represent by the person who signed them and delivered by him to the person designated to receive them.

(2) A record of the amount of milk obtained at each "pickup" shall be left at the farm; this record shall be made in ink, indelible pencil, or by a permanent duplicating process, properly dated and authenticated.

(3) If the weight record form is unsuitable for a signature being entered after each recorded amount of milk, the person who measures and samples it shall sign a certificate at the plant to cover the weight records for each load of milk. In this certificate he shall certify that he personally measured and sampled all of the milk in the load delivered on the said date. In addition, he shall date and sign the weight record at the end of the pay period.

(4) The licensed milk sampler and weigher that

samples each farm bulk tank and obtains a truck load sample after the last pickup shall sign the weight ticket regardless of who delivers the truck load of milk to the milk buyers. [If the licensed sampler and weigher does not accompany the truckload of milk to the plant, he shall date and sign a separate certificate and send it to the plant with the weight records and milk they represent. The form for such a certificate follows:]

[I certify that I personally sampled and measured all of the milk obtained in the load delivered this date:]

[Date_____ Signature_____]
[Delivered by_____ Rec'd by_____]

(5) Milk samples shall be under the haulers immediate surveillance at all times until they are delivered to the buyer, except as provided in Section 5(3) of this regulation.

Section 6. All licensed weighers and samplers transporting farm bulk milk in bulk tank trucks shall be required to obtain a "load sample" from the tank on their truck immediately after the last producers milk is pumped into their truck tank.

(1) The load sample shall [must] be taken with a sanitized dipper from the porthole on top of tank on the truck. Care shall [must] be taken to prevent any foreign material from entering the porthole which could contaminate the milk when the load sample is taken.

(2) This load sample is to be used for comparison of load and individual producers' samples for the purpose of grading and evaluation of the haulers competency in sampling.

(3) This load sample is to be taken by all bulk haulers in addition to, not in lieu of, any other load samples required by the buyer of the milk.

C. ORAN LITTLE, Director
APPROVED BY AGENCY: August 31, 1988
FILED WITH LRC: September 6, 1988 at 4 p.m.
PUBLIC HEARING: Statutory Authority to KRS 13A.270 a public hearing on this administrative regulation will be held at 1:30 p.m., October 21, 1988, 102 Scovell Hall, Division of Regulatory Services, University of Kentucky, Lexington, Kentucky. Those interesed in attending this hearing shall, no later than October 16, 1988 contact the following in writing: Mr. Ed Troutman, Coordinator, Creamery License Program, Division of Regulatory Services, 102 Scovell Hall, University of Kentucky, Lexington, Kentucky 40546-0064.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: E. C. Troutman, Creamery Coordinator
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: N/A
TIERING: Was tiering applied? No. This is not a new regulation but an amended regulation. The amendments are simple updated procedures that all milk haulers shall use in obtaining representative milk samples and milk weights for producer payment. All milk weighers and samplers must be treated alike since there is only one class of regulated entities and different treatment would raise constitutional questions. Therefore tiering is inappropriate. There is no savings of direct or indirect costs or savings to those affected. There is no known conflict, overlapping, or duplication of this administrative regulation. This regulation requires uniformity to all it regulates. Tiering would defeat the intent of this regulation.

UNIVERSITY OF KENTUCKY
College of Agriculture
Agriculture Experiment Station
(Proposed Amendment)

12 KAR 5:050. Inspections.

RELATES TO: KRS 260.775 to 260.845, 260.992
STATUTORY AUTHORITY: KRS 260.825
NECESSITY AND FUNCTION: The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk buyers, testers, and weighers and samplers.

Section 1. For the purpose of enforcement of KRS 260.775 to 260.992, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the director, upon presenting appropriate credentials, are authorized to enter, during normal business hours, any place where milk is being sold, or handled from Kentucky producers, to inspect records pertaining to the purchase and payment of milk, to obtain samples, data and records pertaining to weighing and sampling and testing of producers milk for pay purposes which is necessary to administer the law.

Section 2. (1) Testers and samplers and weighers shall be inspected and graded on the accuracy of their operations and on their compliance with requirements of the law and regulations under the law for which they are responsible. Criteria for awarding grades shall be established annually by the Examining Board, distributed to all licensees and applicants and

printed on the inspection report. Grades given will be: A - Excellent; B - Good to Fair; C - Poor (probation); D - Unsatisfactory.

(2) Milk weigher and samplers receiving three (3) D grades in one (1) year will be required to attend the haulers formal training school even though they may have previously attended. D grades may be given for improper temperature of sample storage, missed producer or load samples, poor inspections and other violations of the law. Continued poor performance of the weigher sampler can result in his being called before the Creamery License Board for a hearing.

Milk fat testers receiving two (2) unsatisfactory grades (C and D) in one (1) year may be put on probation and if unsatisfactory performance continues the tester may be called before the Creamery License Board to discuss why their license should not be suspended or revoked. Unsatisfactory grades may be given for poor inspection grades, substandard equipment, improper calibrations of equipment, fradulent tests and other violations of the law. [Two (2) consecutive D grades received by a tester or a sampler and weigher will necessitate a hearing before the Milk Coordinator of the Division of Regulatory Services and possible referral to the Examining Board for further action.]

Section 3. Buyers shall be inspected and rated on items for which they are responsible. Notice shall be given to correct any discrepancies. Unsatisfactory compliance and violations shall be handled in accordance with provisions of the law.

C. ORAN LITTLE, Director
APPROVED BY AGENCY: August 31, 1988
FILED WITH LRC: September 6, 1988 at 4 p.m.
PUBLIC HEARING: Statutory Authority to KRS 13A.270 a public hearing on this administrative regulation will be held at 1:30 p.m., October 21, 1988, 102 Scovell Hall, Division of Regulatory Services, University of Kentucky, Lexington, Kentucky. Those interesed in attending this hearing shall, no later than October 16, 1988 contact the following in writing: Mr. Ed Troutman, Coordinator, Creamery License Program, Division of Regulatory Services, 102 Scovell Hall, University of Kentucky, Lexington, Kentucky 40546-0064.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: E. C. Troutman, Creamery Coordinator
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: N/A
TIERING: Was tiering applied? No. This is not a new regulation but an amended regulation. The amendments pertain to the evaluation of testers and haulers through inspection. All milk buyers, testers, weighers and samplers shall be treated alike since there is only one class of regulated entities and different treatment would raise constitutional questions. Therefore tiering is inappropriate. There is no savings of direct or indirect costs or savings to those affected. There is no known conflict, overlapping, or duplication of this administrative regulation. This regulation requires uniformity to all it regulates. Tiering would defeat the intent of this regulation.

UNIVERSITY OF KENTUCKY
College of Agriculture
Agriculture Experiment Station
(Proposed Amendment)

12 KAR 5:060. Purchases from farm bulk tanks.

RELATES TO: KRS 260.775 to 260.845, 260.992
STATUTORY AUTHORITY: KRS 260.780
NECESSITY AND FUNCTION: The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk buyers. The function of this regulation is to set up aids and safeguards to insure compliance with the law which states that buyers shall [must] purchase milk from farm bulk tanks that is measured and sampled by licensed samplers and weighers only.

Section 1. Buyers who purchase milk held in farm bulk tanks shall keep a sampler and weighers license record file on all samplers and weighers who sample and measure milk in farm bulk tanks purchased by said buyer. This file shall [must] show for each such person: his name, address, signature, description and the status of his license or permit to sample and weigh.

Section 2. Milk buyers shall [must] check weigh tickets or records and certificates daily to insure that they are in accordance with the creamery license law and regulations.

C. ORAN LITTLE, Director
APPROVED BY AGENCY: August 31, 1988
FILED WITH LRC: September 6, 1988 at 4 p.m.
PUBLIC HEARING: Statutory Authority to KRS 13A.270 a public hearing on this administrative regulation will be held at 1:30 p.m., October 21, 1988, 102 Scovell Hall, Division of Regulatory Services, University of Kentucky, Lexington, Kentucky. Those interesed in attending this hearing shall, no later than October 16, 1988 contact the following in writing: Mr. Ed Troutman, Coordinator, Creamery License Program, Division of Regulatory Services, 102 Scovell Hall, University of

Kentucky, Lexington, Kentucky 40546-0064.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: E. C. Troutman, Creamery Coordinator
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: N/A
TIERING: Was tiering applied? No. This is not a new regulation nor was it amended. All milk buyers, weighers, and samplers shall be treated alike since there is only one class of regulated entities and different treatment would raise constitutional questions. Therefore tiering is inappropriate. There is no savings of direct or indirect costs or savings to those affected. There is no known conflict, overlapping, or duplication of this administrative regulation. This regulation requires uniformity to all it regulates. Tiering would defeat the intent of this regulation.

UNIVERSITY OF KENTUCKY
College of Agriculture
Agriculture Experiment Station
(Proposed Amendment)

12 KAR 5:070. Uniform standards for payment.

RELATES TO: KRS 260.775 to 260.845, 260.992
STATUTORY AUTHORITY: KRS 260.780
NECESSITY AND FUNCTION: The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk buyers. The functions of this regulation is to provide uniform standards in the payment of producer milk based on milk component [fat] tests, for fresh [or composite] samples, special samples and tests and required records of tests.

Section 1. (1) Special samples are those samples taken in emergencies to replace churned, spilled, soured or other regular samples determined as "wild." Two (2) or more of these daily samples shall [must] be taken and tested; the samples may be composited or the results averaged. Results of tests on special samples are designated as special tests.
(2) A "wild" fat test for fresh samples is defined as one testing 0.50 [0.75] percent above or below the patron's last average pay test and determined to not be watered. [A "wild" test for composite samples is defined as one testing 0.40 percent above or below the patron's last average pay test and determined to not be watered.]
(3) When a plant obtains a "wild" milk fat test it may be discarded and tests obtained from the next two (2) milk deliveries used in its place.

Section 2. Age and Number of Samples Used for Pay Purposes. [(1) Composite milk samples shall cover a period not to exceed sixteen (16) days.]
(1) [(2)] Fresh milk samples are samples not over twenty-four (24) hours old when received by the buyer.
(2) [(3)] Manufacturing milk. Use the average if three (3) fresh milk samples for each producer per fifteen (15) day pay period as equally distributed over the pay period as possible.
(3) [(4)] Grade A milk. Use samples from at least five (5) days production for each producer taken fairly evenly dispersed throughout the pay period.
(4) [(5)] Fresh milk samples shall [should] be tested preferably on the day sampled but within seventy-two (72) hours from the time of procurement, otherwise they must be preserved [in accordance with methods outlined for composite samples].

Section 3. Records of tests to be used as a basis for pay designated in these regulations as legal test records shall consists of:
[(1) Records of tests made on composite samples.]
(1) [(2)] Records of tests made on fresh samples.
(2) [(3)] Records of retests and special tests.

Section 4. (1) The requirements for legal test records shall be [are]:
(a) All legal test records shall [must] be original, that is recorded as they are read.
(b) All legal test records shall [must] be recorded in ink or indelible pencil and each separate sheet dated and signed by a licensed tester.
(c) Changes or corrections to any legal test records shall [must] be made by drawing a line through the incorrect test and entering the correct test and tester's initials nearby. (Erasures and write-overs are forbidden.)
(d) Records of retests and special tests shall [must] be made on record sheets other than the regular (original) test record sheets.
(e) All legal test records shall [must] be kept on file for twelve (12) months.
(2) Each licensed tester shall be [is] responsible for the accuracy of the tests he makes and the accuracy and completeness of the records of these tests. Anything done or left undone to the test records to cause their authenticity to be questionable and therefore illegal is contrary to this regulation.

Section 5. (1) The consolidated pay records are required to be made in a clear, permanent manner, properly arranged and identified. This consolidated record shall [must] be accurately

compiled from the original weight records, legal test records, base price used and other factors affecting the price. A statement shall be supplied each producer with payment for each pay period. The pay record and statement are required to agree and both are required to show: dates covered by payment, amount of milk received and paid for, the average butterfat test of this milk, the price per hundredweight paid, the gross value, deductions if any, and amount paid. Records including original weight records, pay records, test records, and evidence of payment having been made, shall be kept on file for twelve (12) months.

(2) All tests used as basis for pay shall [must] be taken from and agree with the "legal test records" as described and specified above. It is illegal to "make up" tests, to raise or lower tests, to manipulate tests or records or to use any test not documented [backed up] by proper records.

C. ORAN LITTLE, Director
APPROVED BY AGENCY: August 31, 1988
FILED WITH LRC: September 6, 1988 at 4 p.m.
PUBLIC HEARING: Statutory Authority to KRS 13A.270 a public hearing on this administrative regulation will be held at 1:30 p.m., October 21, 1988, 102 Scovell Hall, Division of Regulatory Services, University of Kentucky, Lexington, Kentucky. Those interesed in attending this hearing shall, no later than October 16, 1988 contact the following in writing: Mr. Ed Troutman, Coordinator, Creamery License Program, Division of Regulatory Services, 102 Scovell Hall, University of Kentucky, Lexington, Kentucky 40546-0064.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: E. C. Troutman, Creamery Coordinator
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: N/A
TIERING: Was tiering applied? No. This is not a new regulation but an amended regulation. The amendments are a revision of technical information and shall be uniform to all entities. All milk testers shall be treated alike since there is only one class of regulated entities and different treatment would raise constitutional questions. Therefore tiering is inappropriate. There is no savings of direct or inidrects costs or savings to those affected. There is no known conflict, overlapping, or duplication of this administrative regulation. This regulation requires uniformity to all it regulates. Tiering would defeat the intent of this regulation.

FINANCE & ADMINISTRATION CABINET
Office of Management Services
(Proposed Amendment)

200 KAR 3:045. Monthly meal charges at mansions.

RELATES TO: KRS 42.035, 42.037
STATUTORY AUTHORITY: KRS 42.035, 42.037
NECESSITY AND FUNCTION: KRS 42.035 and 42.037 direct that reasonable amounts shall be deducted from the salary or other allowance, of the Governor and Lieutenant Governor for the consumption of food by them and their families. This regulation sets forth the maintenance charges to be paid by the Governor and the Lieutenant Governor relative to members of their families living at the respective mansions and maintenance charges to be paid by other state employees required by their regular duties to receive meals at the respective mansions.

Section 1. Monthly maintenance charges shall be paid by all persons receiving meals on a regular basis in the Executive Mansion and the Lieutenant Governor's Mansion. Payment shall be made bimonthly either by means of a deduction from the salary paid on the regular payroll, or by check payable directly to the Treasurer, Commonwealth of Kentucky[; provided, however, that direct payment by check shall be in advance on a monthly basis].

Section 2. The monthly maintenance charges to be paid by the Governor and Lieutenant Governor relative to the members of their respective families living at the respective mansions shall be as follows:
(1) The Governor, Lieutenant Governor, and adult members of their respective families, eighty (80) [fifty-six (56)] dollars each.
(2) Children over twelve (12) years of age, forty-eight (48) [thirty-two (32)] dollars each.
(3) Children under twelve (12) years of age, thirty-six (36) [twenty-four (24)] dollars each.

Section 3. Except as provided in Section 4 of this regulation, the monthly maintenance charges to be paid by all other state employees, required by their regular duties to receive meals at the respective mansions, shall be as follows:
(1) Forty (40) [Sixteen (16)] dollars for one (1) meal;
(2) Sixty-two (62) [Twenty-five (25)] dollars for two (2) meals;
(3) Eighty (80) [Thirty-two (32)] dollars for three (3) meals.

Section 4. When the executive officer having use of the particular mansion is not regularly occupying it as a residence, monthly maintenance

charges to be paid state employees, required by their regular duties to receive meals at such mansion, shall be as follows:

(1) Sixteen (16) dollars for one (1) meal;

(2) Twenty-five (25) dollars for two (2) meals;

(3) Thirty-two (32) dollars for three (3) meals.

L. ROGERS WELLS, JR., Secretary

APPROVED BY AGENCY: September 14, 1988

FILED WITH LRC: September 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing has been scheduled at 8 a.m. EDT on Friday, October 21, 1988 in Room B-7 in the basement of the Capitol Annex Building, Frankfort, Kentucky 40601. Persons interested in attending this hearing should contact: K. Michelle Rubarts, Executive Mansion Director, Governor's Mansion, Frankfort, Kentucky 40601; Margaret Lane, Mansion Director, Lieutenant Governor's Mansion, 420 High Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: K. Michelle Rubarts; Margaret Lane

(1) Type and number of entities affected: The Governor's Executive Mansion and the Lieutenant Governor's Mansion are affected by the amendments to 200 KAR 3:045. In particular, since these amendments increase the monthly maintenance charges at the Executive Mansion and Lieutenant Governor's Mansion, members of the Governor's and Lieutenant Governor's families, as well as the staff members at each mansion, will be affected.

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

1. First year: Based upon the current status at the Executive Mansion and Lt. Governor's Mansion, the following additional costs shall be realized under the amendments to 200 KAR 3:045, during the first year:

Executive Mansion:

(2) Adult members - Under the current regulation, adult members pay $56 each per month x 2 = $112 per month - $1,344 per year. Under the proposed amendments to 200 KAR 3:045, adult members will pay $80 each per month x 2 = $160 per month - $1,920 per year. The annual additional cost will be $576.

(2) Children over 12 - Under the current regulation, children pay $32 each per month x 2 = $64 per month - $768 per year. Under the proposed amendments to 200 KAR 3:045, children over 12 will pay $48 each per month x 2 = $96 per month - $1,152 per year. The annual additional cost will be $384.

There are no children under 12 in the Governor's family.

Staff members - Currently, all staff members eat only one meal a day at the mansion. Employees eating one meal a day at the Executive Mansion under the current regulation pay a monthly maintenance charge of $16 per month. Under the proposed amendments to 200 KAR 3:045, an employee eating one meal at the Executive Mansion per day will pay a monthly maintenance fee of $40, for a difference of $24 per month per employee. The annual additional cost per employee will be $288.

Lieutenant Governor's Mansion:

Based upon the current use of the Lieutenant Governor's Mansion, the following additional costs will be realized under the proposed amendments to 200 KAR 3:045, during the first year:

(2) Adult members - The additional costs would be the same as those realized by the adult members of the Governor's family. The annual additional cost will be $576.

There are no children over 12 in the Lieutenant Governor's family.

(2) Children under 12 - Currently, these children do not eat meals at the Lieutenant Governor's Mansion, therefore, there is no monthly maintenance charge assessed. However, if these children do eat meals at the Lieutenant Governor's Mansion, then the additional costs will be $12 per child per month. (This is the difference between the current rate of $24 per child per month and the proposed rate of $36 per child per month.) The annual additional cost would be $288.

Staff members - Under the proposed amendments to 200 KAR 3:045, there will be no change in the monthly maintenance fees assessed at the Lieutenant Governor's Mansion, since it is not currently being occupied by the Lieutenant Governor as a residence.

2. Continuing costs or savings: The continuing costs should be the same as those stated above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The only factor which would change any of the above-referenced costs, is if the Lieutenant Governor regularly occupies the Lieutenant Governor's Mansion, at which time the monthly maintenance fee assessed staff members at the Lieutenant Governor's Mansion will be increased according to the number of meals eaten by these employees.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements imposed upon the individuals affected by these regulations.

(2) Effects on the promulgating administrative body: There will be no additional costs imposed upon the promulgating administrative body. However, there will be additional revenues realized as a result of the proposed amendments to 200 KAR 3:045.

(a) Direct and indirect costs or savings:

1. First year: Governor's Executive Mansion: (2) adult members - $576 additional revenue per year; (2) children over 12 - $384 additional revenue per year; (37) staff members - $10,656 additional revenue per year. Total additional revenue - $11,616 per year. Lieutenant Governor's Mansion: based upon the current status of the Lieutenant Governor's Mansion, the additional revenue to be realized at the Lieutenant Governor's Mansion will be $576 per year.

2. Continuing costs or savings: Based upon the current status of the Governor's Executive Mansion and the Lieutenant Governor's Mansion, the continuing revenues realized by the state should be the same as stated above.

3. Additional factors increasing or decreasing costs: The only factor which would change any of the above-referenced revenues, is if the Lieutenant Governor regularly occupies the Lieutenant Governor's mansion, at which time the monthly maintenance fee assessed staff members at the Lieutenant Governor's Mansion will be increased according to the number of meals eaten by the employees at the mansion. Consequently, the revenues realized by the Lieutenant Governor's Mansion would be increased

proportionately.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements imposed upon the promulgating administrative body as a result of these amendments.

(3) Assessment of anticipated effect on state and local revenues: Based upon the current status of the Governor's Executive Mansion and the Lieutenant Governor's Mansion, the state will realize an annual increase in revenues of $12,192, in the first year.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under KRS 42.035, and 42.037, the Finance and Administration Cabinet must deduct a reasonable amount from the salaries of the Governor and Lieutenant Governor and salaries of their staff for monthly maintenance charges. Pursuant to this regulation, the Secretary of the Finance and Administration Cabinet establishes the amount of these deductions. There are no other alternative methods by which these rates can be established.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no other statute, administration regulation, or government policy which conflicts, overlaps, or duplicates the amendments to 200 KAR 3:045.

(a) Necessity of proposed regulation if in conflict: There is no statute, regulation, or government policy in conflict with the proposed amendments to 200 KAR 3:045.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, regulation, or government policy in conflict with the proposed amendments to 200 KAR 3:045.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:040. Procedure for renewing licenses.

RELATES TO: KRS 327.050

STATUTORY AUTHORITY: KRS 327.040

NECESSITY AND FUNCTION: Provides specific directions for the biennial renewal of the physical therapy license or temporary permit. [The billfold license is a means of identifying those persons holding themselves out as a licensed physical therapist.]

Section 1. The [licensed] physical therapist will automatically receive renewal of licensure or temporary permit upon payment on or before March 31st of each uneven numbered year of a renewal fee to be set by regulation and submission of the following written information to the executive secretary of the board: [. The licensee must also furnish]

(1) Current complete home address [and all physical therapy business locations and addresses] and telephone number, including county of residence;

(2) Current, complete name(s) and address(es), telephone number(s), and county(ies) of each location in which physical therapy service is provided; and

(3) Written confirmation that the person has not since his license or permit was issued or renewed:

(a) Been convicted of a felony or any crime in the courts of this state or any other state, territory or country;

(b) Had his license disciplined or under current disciplinary review in another state;

(c) Had a civil judgment concerning his practice; or

(d) Had any other circumstance which may be in violation of KRS 327.070. Persons convicted or disciplined in the interim before renewal may submit such information during that period for consideration by the board prior to license renewal. Notice of violation by a licensee except minor traffic violations which do not involve substance abuse will be reviewed by the board. [sending all to the executive secretary of the board.]

Section 2. If payment and complete information are not received by the executive secretary by March 31 of each uneven numbered year, the license or permit shall lapse and the person shall not work as a physical therapist in Kentucky.

Section 3. [2.] Upon initial licensing and each subsequent renewal, each [all] therapist[s] will be furnished a validation that shall [must] be posted to the original certificate and displayed at the primary physical therapy service location and a billfold license which is a means of identifying a person holding himself out as a physical therapist. [business address.]

WALTER KIM CLEARY, Chairman

APPROVED BY AGENCY: August 30, 1988

FILED WITH LRC: September 2, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1988 at 10 a.m. in Room 110 of the Capitol Annex. Individuals interested in attending this hearing shall notify this agency in writing by October 16, 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: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205-2778, (502) 588-4687.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly

(1) Type and number of entities affected: Approximately 1,000 physical therapists.

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

1. First year: Persons having violated KRS

327.070 may incur legal fees.
2. Continuing costs or savings: Same as #1.
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Persons reporting convictions or disciplinary action will be required to furnish copies of actions.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Increased time to review applications and documents. Possible costs related to a hearing.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: No change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method available to collect such information after license is issued.
(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: Prior to this proposed amendment to the license renewal regulation, the board had no consistent way of learning if a licensee had been convicted, had a civil judgment, or any other act which may be in violation of KRS 327.070.
TIERING: Was tiering applied? No. All physical therapists are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:110. Renewal of assistant's certification.

RELATES TO: KRS 327.040
STATUTORY AUTHORITY: KRS 327.040
NECESSITY AND FUNCTION: This regulation provides specific direction for the biennial renewal of the physical therapist's assistant certificate or temporary permit. [assistant's certification. The billfold certificate is a means of identifying those persons holding themselves out as a certified physical therapist's assistant.]

Section 1. The assistant will automatically receive a renewal certificate or temporary permit upon payment on or before March 31 of each uneven numbered year of a renewal fee to be set by regulation and submission of the following written information to the board:
(1) Current complete home [and all physical therapy business locations,] address[es] and telephone number, including county of residence, [and sending all to the executive secretary of the board.]
(2) Current, complete name(s), address(es), telephone number(s), and county(ies) of each location in which physical therapy service is provided; and
(3) Written confirmation that the person has not since his certificate or permit was issued or renewed:
(a) Been convicted of a felony or any crime in the courts of this state or any other state, territory or country;
(b) Had his license disciplined or under current disciplinary review in another state;
(c) Had a civil judgment concerning his practice; or
(d) Had any other circumstance which may be in violation of KRS 327.070. Persons convicted or disciplined in the interim before renewal may submit such information during that period for consideration by the board prior to license renewal. Notice of violation by a certificant except minor traffic violations which do not involve substance abuse will be reviewed by the board.

Section 2. If payment and complete information are not received by the executive secretary by March 31 of each uneven numbered year, the certificate or permit shall lapse and the person shall not work as a physical therapist's assistant in Kentucky.

Section 3. [2.] Upon initial certification and each subsequent renewal, each [all certified] physical therapist's assistant will be furnished a validation that shall [must] be posted to the original certificate and displayed at the primary physical therapy service location and a billfold certificate which is a means of identifying a person holding himself out as a physical therapist's assistant. [business address.]

WALTER KIM CLEARY, Chairman
APPROVED BY AGENCY: August 30, 1988
FILED WITH LRC: September 2, 1988 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1988 at 10 a.m. in Room 110 of the Capitol Annex. Individuals interested in attending this hearing shall notify this agency in writing by October 16, 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: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205-2778, (502) 588-4687.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly
(1) Type and number of entities affected: Approximately 300 assistants.
(a) Direct and indirect costs or savings to those affected:
1. First year: Persons having violated KRS

327.070 may incur legal fees.
2. Continuing costs or savings: Same as #1.
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Persons reporting convictions or disciplinary action will be required to furnish copies of actions.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Possible increased time to review applications and documents. Possible costs related to a hearing.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: No change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method available to collect such information after license is issued.
(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: Prior to this proposed amendment to the license renewal regulation, the board had no consistent way of learning if an assistant had been convicted, had a civil judgment, or any other act which may be in violation of KRS 327.070.
TIERING: Was tiering applied? No. All physical therapist's assistants are treated uniformly under the law.

TOURISM CABINET
Department for Fish & Wildlife Resources
(Proposed Amendment)

301 KAR 1:085. Mussel shell harvesting.

RELATES TO: KRS 150.025, 150.110, 150.170, 150.175, 150.190, 150.510, 150.520
STATUTORY AUTHORITY: KRS 13A.150, 150.025
NECESSITY AND FUNCTION: It is necessary to regulate the manner of taking mussels because of the value and susceptibility of these animals for overharvest. This amendment is necessary to close musseling in the Big South Fork National River and Recreational Area to bring this regulation into conformance with federal restrictions. [establish a mussel sanctuary on the Ohio River as a result of the relocation of a downstream bed.]

Section 1. Conforming with KRS 150.170, all persons who actively participate in the harvesting and sale of mussels or mussel shells, whether or not they own or possess the gear being used in the harvest of mussels or mussel shells, shall [must] have an appropriate license. Those persons having a valid mussel buyers license are authorized to sell mussels and mussel shells. No boat shall [can] be used in musseling operations without a licensed operator in the boat.

Section 2. The mussel season is open year round in all streams and on all beds, except as specified in this section.
(1) Musseling is prohibited in the Tennessee River from Kentucky Dam downstream to river mile seventeen and eight-tenths (17.8), an area established as a mussel sanctuary.
(2) Musseling is prohibited within the stream segments 200 yards below any dam on any stream.
(3) Musseling is prohibited on the Cumberland River from Barkley Dam downstream to the U.S. Highway 62 bridge.
(4) Musseling is prohibited in all embayments on Barkley and Kentucky Lakes.
(5) Musseling is prohibited in the Ohio River between river mile 418 and river mile 419, an area established as a mussel sanctuary.
(6) Musseling is prohibited on the Big South Fork of the Cumberland River and tributaries above the confluence of Koger Creek.

Section 3. Musseling is permitted during the hours of 6 a.m. and 6 p.m. daily except in Barkley and Kentucky Lakes where the hours are 8 a.m. to 6 p.m.

Section 4. The statewide size limits for taking of mussels shall be as follows. All mussels smaller than these minimum sizes must immediately be returned to the water from which taken.
(1) Washboard mussels, Megalonaias gigantea, shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of three and three-fourths (3 3/4) inches.
(2) Three (3) ridge mussels, Amblema plicata, shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and three-fourths (2 3/4) inches.
(3) All other mussels, except the Asiatic clam, Corbicula sp. shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and one-half (2 1/2) inches.
(4) The Asiatic clam, Corbicula sp., may be taken at any size.

Section 5. Mussel harvesting from the waters of the Commonwealth of Kentucky, except as [otherwise] provided in Section 8 of this regulation, shall be by brail only. No more than two (2) brails each sixteen (16) feet or less in length shall [may] be simultaneously operated from any boat. More than two (2) brails may be carried aboard the boat.

Section 6. Mussel brail hooks when used shall [must] be constructed of wire of at least fourteen (14) gauge; smaller wire is prohibited.

Section 7. Prongs of hooks shall [must] be no longer than one and one-fourth (1 1/4) inch [in size] as measured from the tip of point to place on hook where the prongs are joined.

Section 8. The Commissioner may designate as disaster areas waters in which all live mussels have been killed, and may issue a special permit allowing the use of various harvest methods.

Section 9. No mussels designated as endangered shall [may] be taken [after such designation has been made by regulation and duly advertised].

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman
APPROVED BY AGENCY: September 15, 1988
FILED WITH LRC: September 15, 1988 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on Wednesday, October 26, 1988 at 1:30 p.m. in the Meeting Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
(1) Type and number of entities affected: Presently there are no mussel fishermen harvesting mussels from the Big South Fork of Cumberland River. There are 285 licensed mussel fishermen in Kentucky who will not be allowed to mussel the Big South Fork of the Cumberland River, should they choose to do so in the future.
(a) Direct and indirect costs or savings to those affected: There are no costs or savings involved as there is no mussel collecting activity occurring.
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 are involved.
(2) Effects on the promulgating administrative body: No additional effort will be required. Policing will be a part of ongoing routine patrol.
(a) Direct and indirect costs or savings: Very small increased costs will occur as a result of time spent apprehending violators.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Slight increase in citations and associated law enforcement reports.
(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on budgets, funding, manpower levels or equipment needs.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Consideration was given to leaving the Big South Fork of the Cumberland River closed to musseling under federal law only. This was rejected because state conservation officers would not be able to provide law enforcement assistance.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or government policies which are 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: It is highly unlikely that anyone would want to attempt to harvest mussels from the Big South Fork, given the fact that brailing (only method permitted) would be very ineffective in flowing waters containing underwater obstructions.
TIERING: Was tiering applied? Yes.

TOURISM CABINET
Department for Fish & Wildlife Resources
(Proposed Amendment)

301 KAR 1:150. Waters open to commercial fishing.

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: It is necessary to regulate the places where commercial fishing is permitted to insure that the size of the water and fish population is large enough for this type of activity to better utilize and conserve those populations concerned. This amendment is necessary to close commercial fishing in the Big South Fork National River and Recreational Area in conformance with existing federal law. [resolve use conflicts between commercial and sport fishermen below Smithland Lock and Dam.]

Section 1. Appropriately licensed commercial fishermen may fish with commercial fishing gear in the following designated waters subject to requirements as set forth in regulations designating commercial gear and manner of taking. Commercial gear shall [may] be used in no other waters of the commonwealth except under specific permit.

Section 2. Commercial Fishing Waters. (1) Streams and rivers.
(a) Barren River from its junction with Green River upstream to Greencastle, Kentucky;
(b) Big Sandy River from its junction with Ohio River upstream to junction of Levisa and Tug Forks;
(c) Levisa Fork [of Big Sandy River] from its junction with Big Sandy River upstream to 200 yards below mouth of Paint Creek in Johnson County;
(d) Cumberland River from its junction with Ohio River upstream to Highway 62 bridge;
(e) Eagle Creek from its junction with Kentucky River upstream to Highway 22 bridge in Grant County;
(f) Green River from its junction with Ohio River upstream to 200 yards below Lock and Dam 6;
(g) Highland Creek from its junction with Ohio River upstream to Rock Ford Bridge in Union County;
(h) Kentucky River from its junction with Ohio River upstream to junction of North and Middle Forks of Kentucky River;
(i) North Fork of Kentucky River from its junction with Kentucky River upstream to mouth of Walker's Creek;
(j) South Fork of Kentucky River from its junction with Kentucky River upstream to mouth of Cow Creek;
(k) Licking River from its junction with Ohio River upstream to a point directly adjacent to Highway 111 on the Bath and Fleming Counties line;
(l) Mississippi River from the mouth of Ohio River downstream to the Tennessee line;
(m) Mud River from its junction with Green River upstream to McGee Landing in Butler and

Muhlenberg Counties;
(n) Ohio River from its junction with Mississippi River upstream to West Virginia line except that segment of the river that extends from a point 200 yards below Smithland Dam to the end of the Smithland outer lock wall (a distance of some 625 yards) wherein slatbaskets will be the only piece of commercial gear allowed;
(o) Pond River from its junction with Green River upstream to Highway 62 bridge;
(p) Panther Creek from its junction with Green River upstream to head of creek;
(q) Rough River from its junction with Green River upstream to Highway 69 bridge at Dundee, Kentucky;
(r) Tennessee River from its junction with Ohio River upstream to River Mile 17.8;
(s) Tradewater River from its junction with Ohio River upstream to bridge; and
(t) Salt River from its junction with the Ohio River upstream to the northwestern boundary of Ft. Knox.
(2) Lakes. The following lakes are open to commercial fishing, but not above the first shoal or riffle upstream from the impounded or standing pool of the lake in any main or tributary stream except as noted below:
(a) Barkley;
(b) Cumberland Lake is closed above the confluence of Koger Creek on the Big South Fork Tributary;
(c) Herrington;
(d) Kentucky;
(e) Nolin;
(f) Rough River;
(g) Overflow lakes directly connected to the Mississippi and Ohio Rivers;
(h) Dewey Lake is open uplake to [a point directly beneath the concrete structure known as] Buffalo Bridge [which crosses the lake]; and
(i) Barren Lake.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman
APPROVED BY AGENCY: September 15, 1988
FILED WITH LRC: September 15, 1988 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on Thursday, October 27, 1988 at 10 a.m. in the Meeting Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
(1) Type and number of entities affected: There are 873 licensed commercial fishermen fishing in Kentucky. 57 of these fishermen are located in the Lake Cumberland Area.
(a) Direct and indirect costs or savings to those affected: Potential for some slight losses due to closure. However, ample commercial fishing opportunities in other areas will compensate for the loss.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: There is no reporting or paperwork required.
(2) Effects on the promulgating administrative body: No additional effort will be required. Policing will be a part of ongoing routine patrol.
(a) Direct and indirect costs or savings: Very small increased costs will occur as a result of time spent apprehending violators. Occurrence of violations should decrease over time.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Slight initial increase in citations and associated law enforcement reports.
(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on budgets, funding, manpower levels or equipment needs.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Consideration was given to leaving the Big South Fork of the Cumberland River in the area of concern closed to commercial fishing under federal law only. This was rejected because state conservation officers would not be able to provide law enforcement assistance.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or government policies which are 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: At present there is very little commercial fishing activity in the 4 mile section of the Big South Fork between Koger Creek and Alum Ford that is to be closed.
TIERING: Was tiering applied? No. Commercial fishermen are the only entities regulated. There is no justification for tailored requirements. There is biological justification for tailored resource requirements and as such the allowable use, methods and gear vary from one body of water to another.

TOURISM CABINET
Department for Fish & Wildlife Resources
(Proposed Amendment)

301 KAR 1:200. Seasons and limits for angling.

RELATES TO: KRS 150.010, 150.025, 150.470, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: In order to insure the continuance of viable and desirable populations of fish, it is necessary to govern the size and numbers anglers can harvest. This amendment is necessary to impose special restrictions on brook trout streams, reduce the striped bass creel limit and increase the smallmouth and largemouth bass size limit at Lake Cumberland, and adjust the crappie creel limits at Kentucky, Barkley and Barren lakes.

Section 1. The statewide [season,] creel

limits, [and] size limits and possession limits for taking fish by angling shall be as follows, except as specified in Section 3 [2] of this regulation [for specific bodies of water] and as provided in 301 KAR 1:180[, Fisheries management permit for private waters]:

	Size Limit Inches	Daily Creel Limit	Possession Limit
Black bass:*			
Largemouth	12)	10	20
Smallmouth	12)	Singly	Singly
Kentucky (spotted)	None)	or in	or in
Coosa	12)	Aggregate	Aggregate
Rock bass (goggle eye or redeye)	None	15	30
Walleye and their hybrids	15	10	20
Sauger	None	10	20
Muskellunge and their hybrids	30	2	2
Northern pike	None	5	10
Chain pickerel	None	5	10
White bass and yellow bass	None	60	60
Striped bass (rockfish) and their hybrids	15	5	5
Crappie	None	60	60
Rainbow trout & brown trout	None	8	8
Brook trout	10	2	2
[Trout (all species)	None	8	8]

*For size limit purposes, any black bass, with the exception of the smallmouth, with a patch of teeth on its tongue is considered to be a Kentucky bass.

Section 2. Seasons for all species is year around.

Section 3. [2.] The following special limits apply. All other angling limits and seasons apply as set forth in Sections 1 and 2 of this regulation.

(1) The impounded waters of Grayson Lake. The size limit on largemouth bass and smallmouth bass is fifteen (15) inches. There are no daily creel or possession limits on crappie.

(2) The impounded and flowing waters of Dix River and its tributaries upstream from Herrington Lake Dam:

	Size Limit Inches	Daily Creel Limit	Possession Limit
White bass, striped bass (rockfish) and their hybrids	*	20	40

*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

(3) The impounded waters of Taylorsville Lake. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches.

(4) The impounded waters of Kentucky and Barkley Lakes, including the connecting canal. The size limit for largemouth bass and smallmouth bass is fourteen (14) inches, except that the daily limit may include no more than one (1) and the possession limit no more than two (2) less than fourteen (14) inches in length. The creel and possession limits for crappie are thirty (30) and sixty (60) respectively.

(5) The impounded waters of Cave Run and Dewey Lakes. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches.

(6) The impounded and flowing waters of Barren River and its tributaries upstream from Barren River Lake Dam.

	Size Limit Inches	Daily Creel Limit	Possession Limit
Crappie	10	30 [25]	60 [50]
White bass, striped bass (rockfish) and their hybrids	*	20	40

*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

(7) The impounded waters of Cumberland Lake. The size limit for largemouth and smallmouth bass is fifteen (15) inches. The creel and possession limits for striped bass (rockfish) are three (3) and three (3) respectively.

(8) The following brook trout streams:

(a) Shillalah Creek, Bell County (outside boundary of Cumberland Gap National Park);

(b) Martins Fork and tributaries, Harlan County (outside boundary of Cumberland Gap National Park);

(c) Bad Branch, Letcher County;

(d) Poor Fork, Letcher County;

(e) Parched Corn Creek, Wolfe County.

Fishing is permitted only with artificial flies or lures with a single hook. Possession of fish eggs, small fish, insects, worms, or other similar organic bait or parts thereof while in the possession of fishing tackle is prohibited.

Section 4. [3.] Measure all fish from the end of the lower jaw to the tip of the tail with fish laid flat on rule, mouth closed and tail lobes squeezed together. All fish caught that are smaller than those prescribed minimum lengths shall [must] be returned immediately to the waters from which they were taken in the best physical condition possible. Under no circumstances may a fisherman remove the head or the tail or part thereof of any of the above-named fish while in the field and before he has completed fishing for the day.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman

APPROVED BY AGENCY: September 15, 1988
FILED WITH LRC: September 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on Friday, October 21, 1988 at 10 a.m. in the Meeting Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: There are over 1 million licensed and unlicensed anglers in Kentucky. Approximately 200,000 of those anglers fished for crappie, 350,000 fished for bass, 50,000 fished for striped bass, and 40,000 fished for trout.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to affected entities because fishing frequency and fishing success will not be changed. The average angler costs and economic benefit will continue to accrue at the same rate.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no reporting or paperwork involved.

(2) Effects on the promulgating administrative body: No additional effort will be required. Policing and evaluation is a part of ongoing patrol and study.

(a) Direct and indirect costs or savings: Very small increased costs will occur as a result of time spent apprehending violators.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Slight increase in citations and associated law enforcement reports. Informational brochures will be expanded.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on budgets, funding manpower levels or equipment needs. No loss in license sales or decrease in local economic impact is expected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the imposition of harvest restrictions is the only effective means of achieving quality fishing experiences, assuring reproductive viability while at the same time allowing for a reasonable number of fish to be taken from the population.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or government policies which are 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: Surveys conducted at these lakes, feedback from marina and dock owners and comments from the Kentucky Council of Trout Unlimited indicate high acceptability of these regulation changes.

TIERING: Was tiering applied? No. Only one entity, the sport fisherman, is impacted by this regulation. There is no social or biological justification for nonuniform application of angling requirements.

TOURISM CABINET
Department for Fish & Wildlife Resources
(Proposed Amendment)

301 KAR 2:140. Seasons for wild turkey.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.305, 150.320, 150.330, 150.360, 150.365, 150.390, 150.993

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to seasons and limits for wild turkey. The commissioner with the concurrence of the commission finds this regulation necessary for the continued protection and conservation of wild turkey populations and to insure a permanent and continued supply for present and future residents of the state. The function of this regulation is to provide for the prudent taking of wild turkeys within reasonable limits based upon an adequate supply. This amendment is necessary to designate currently appropriate turkey hunting seasons for specific counties and wildlife management areas.

Section 1. Seasons and Counties Open to Wild Turkey Hunting. (1) Zone A, season opens third Wednesday in April for fourteen (14) consecutive days in Ballard, Bell south of Highway 119 and east of Highway 25E, Boyle, Bullitt, Butler east of the Green River Parkway, Caldwell east of Highway 139, Casey west of Highway 127, Christian, Harlan, Hopkins south of Highway 70, Letcher, Logan west of Highway 431, Marion east of Highway 337, McCreary north of Highway 92, Nelson west of Highway 31E, Pike south of Elkhorn Creek, Pulaski south of the Cumberland River, Todd east of Highway 181. [Season opens the third Wednesday in April for fourteen (14) days in Ballard, Bath, Bell south of Highway 119 and east of Highway 25E, Boyle, Bullitt, Butler east of the Green River Parkway, Caldwell south of the West Kentucky Parkway, Casey west of Highway 127, Christian, Harlan, Hopkins south of the West Kentucky Parkway, Letcher, Marion east of Highway 55, Menifee north of Highway 460, McCreary north of Highway 92, Nelson north of the Bluegrass Parkway, Pike south of Elkhorn Creek and Pulaski south of the Cumberland River. Season opens the third Wednesday in April for seven (7) days in Adair north of the Cumberland Parkway, Breckinridge south of Highway 60, Carroll west of the Kentucky River, Carter north of I-64, Franklin west of the Kentucky River, Hancock east of Highway 69, Henry south of Highway 22, Laurel west of I-75, Lewis east of Highway 59, Logan west of Highway 431, Marshall southwest of Highway 68, Ohio east of Highway 231, Taylor south of Highway 70, Todd east of Highway 181, Trigg south of Highway 68, Trimble east of Highway 421 and Webster east of Highway 41A.]

(2) Zone B, season opens third Wednesday in April for seven (7) consecutive days in Adair north of the Cumberland Parkway, Breckinridge south of Highway 60, Carroll west of the Kentucky River, Calloway south of Highway 94 and east of Highway 641, Carter north of I-64, Grayson north of the West Kentucky Parkway, Hancock east of Highway 69, Hart south of Highway 88 and west of I-65, Larue north of Highway 84, Laurel west of I-75, Livingston south of the Cumberland River, Marshall southwest of Highway 68, Rowan north of I-64, Taylor south of Highway 70, Trigg south of

Highway 68, Trimble east of Highway 421, Webster east of Highway 41A.

(3) [(2)] All other counties and portions of counties are closed to wild turkey hunting except as specified in Section 4 of this regulation.

Section 2. Bag and Possession Limits. (1) No more than two (2) [Only one (1)] turkeys with visible beards per hunter per spring season shall [may] be taken with the following restrictions: no more than one (1) turkey per day shall be taken, no more than two (2) turkeys shall be taken in Zone A, and no more than one (1) turkey shall be taken in Zone B. [, except that two (2) turkeys may be taken if one (1) is taken on Fort Knox, Fort Campbell, or Land Between the Lakes.]

(2) No more than [Only] one (1) turkey shall [may] be taken in the fall [by archery on areas specified in regulations pertaining to deer and turkey on special areas].

(3) No more than three (3) turkeys shall [may] be taken in any calendar year.

Section 3. Requirements and Restrictions. (1) The use of dogs is prohibited.

(2) All turkey hunters shall [must] have in their possession a valid wild turkey permit and a valid annual Kentucky hunting license, unless exempted by KRS 150.170(3), (5), (6) or (7).

(3) Turkey shall [may] be taken only from one-half (1/2) hour before sunrise until 1 p.m. During fall seasons, turkey may be taken only during daylight hours. [12 noon]

(4) Turkey may be taken with the aid of hand or mouth operated calls. Electronic calls are prohibited.

(5) Shotguns no larger than ten (10) gauge or no smaller than twenty (20) gauge are the only firearms which shall be used. [Permitted and prohibited weapons.]

[(a) Firearms. Turkey may be taken with shotguns only. Shotguns must be no larger than 10 gauge or no smaller than 20 gauge.] Only Number 4 shot or smaller shall [may] be used. Shot larger than Number 4 or [Buckshot and] slugs shall [may] not be possessed while turkey hunting.

(6) [(b) Archery. Turkey may be taken with any] Longbows, recurve and compound bows which do not have devices to hold an arrow at full draw without human aid are the only archery equipment which shall be used. Only barbless arrows without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide are permitted.

(7) [(6)] The hunter shall attach the transportation tag to the turkey immediately after taking. Any hunter harvesting a wild turkey shall have it checked at the nearest check station or by the nearest available conservation officer no later than 5 p.m. on the day the turkey is taken except as required on specified wildlife management areas. The hunter must fill out an official game check card and submit it to the check station operator or conservation officer. The hunter's portion of this card must be retained in the hunter's possession until the turkey is processed. Turkeys shall be checked before being transported out of the state. [Any hunter harvesting a wild turkey must have it checked at the nearest check station or by the nearest available conservation officer no later than 5 p.m. on the day the turkey is taken except as required on specified wildlife management areas. The hunter must attach the tag portion to the turkey immediately after taking. Turkeys must be checked before being transported out of the state.]

(8) [(7)] Turkeys may be taken with the aid of decoys. Live turkeys shall [may] not be used as decoys.

(9) [(8)] Turkeys shall [may] not be hunted on any baited area. A baited area means any area where feed, grains or any other substances capable of luring wild turkeys have been placed. Such areas shall be considered baited for ten (10) days following the complete removal of all bait. This does not prohibit hunting wild turkeys on any areas where grains, feed or other substances exist as the result of bona fide agricultural practices, or as the result of manipulating a crop for wildlife management purposes, provided that manipulation for wildlife management purposes does not include the placing or scattering of grain, feed or other substances once removed from or stored on the field where grown.

(10) [(9)] Turkeys shall [may] not be hunted from boats.

(11) [(10)] All hunters less than eighteen (18) years of age shall [must] be accompanied by an adult and shall [must] remain under control of that adult at all times. All turkey hunters born after 1972 shall [must] have completed a hunter safety course and shall [must] have a valid hunter safety certificate in their possession while hunting.

Section 4. Seasons and Exceptions on Wildlife Management Areas. All provisions of this regulation apply unless otherwise specified in this section.

(1) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties.

(a) Season: all Saturdays and Sundays in March and April.

(b) Weapons. Muzzle-loading rifles .32 caliber or larger are permitted and 10 gauge shotguns are prohibited. Archery equipment may be used in designated areas only.

(c) Hunters must check turkeys at building 7334 by 2 p.m. on the day harvested.

(d) Bag limit: one (1) turkey per season.

(e) Turkey hunters shall hunt in assigned area(s) only.

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

(a) Season: April 19 [20] through May 7 [8].

(b) Wild turkey may be taken only in designated areas.

(c) All hunters shall [must] check in and out, shall [must] check any turkey before leaving Land Between the Lakes and shall affix an LBL tag to the carcass.

(d) Shooting hours: daylight hours only. [one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset.]

(e) Bag limit: one (1) turkey per season.

(3) Reelfoot National Wildlife Refuge located in Fulton County. [Pioneer Weapons Wildlife Management Area located in Bath and Menifee Counties. Muzzle-loading rifles and muzzle-loading handguns are permitted. Breech-loading shotguns are prohibited. Crossbows of at least 100 pounds pull with a working safety are permitted. Bolts must be barbless with broadhead points at least

seven-eighths (7/8) inch wide.]
(a) Season: April 7, 8 and 9.
(b) Bag limit: one (1) turkey per season.
(c) Permit: Reelfoot permit required.
(4) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties.
(a) Season: April 8 [9] through May 7 [2] with no hunting permitted on Tuesdays or Wednesdays.
(b) Permit. A post combination hunting-fishing permit is required.
(c) Shooting hours: daylight hours only. [one-half (1/2) hour before sunrise to one-half (1/2) after sunset.]
(d) Bag limit: one (1) turkey per season.
(5) Blue Grass Ordnance Depot Activity located in Madison County. Season: third Wednesday in April for fourteen (14) consecutive days.
(6) Ballard Wildlife Management Area in Ballard County is closed to turkey hunting, except that portion south of Terrell Landing Road.
(7) Swan Lake Wildlife Management Area in Ballard County is closed to turkey hunting.
(8) Higginson-Henry Wildlife Management Area located in Union County. Season: archery only. Third Wednesday in April for fourteen (14) consecutive days and either sex, October 1-31. Hunters must check in and check out daily.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman
APPROVED BY AGENCY: September 15, 1988
FILED WITH LRC: September 15, 1988 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 28, 1988 at 9 a.m. in the commission room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Mr. Lauren E. Schaaf, Director, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
(1) Type and number of entities affected: Approximately 5,500 persons will participate in the wild turkey hunting proposed by this regulation.
(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and a wild turkey permit. Indirect costs are determined by the individual hunter, depending upon his level of participation.
1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license ($8.50 for resident) and wild turkey permit ($15) unless exempt by regulations.
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: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.
(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation.
1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $80,000.
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: Approximately 5,500 turkey hunters may be expected to expend money for equipment, transportation, food, and lodging. The annual expenditure for these items averages $46 per day of big game hunting according to the 1985 National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to the necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that wild turkey populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.
(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: 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

TOURISM CABINET
Department for Fish & Wildlife Resources
(Proposed Amendment)

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

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.603, 150.630, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation pertains to the seasons and limits for the taking of specified migratory birds, to the associated permitting and harvest reporting requirements, and to restrictions in the use of blinds and pits. It is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource [for the purpose of furnishing sport and recreation for present and future residents of the state]. The framework of this regulation falls within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates and hunting rules.

Section 1. Definitions. (1) "Blind" means any

form of concealing enclosure, including a pit, from which one may shoot game or observe wildlife including an anchored, stationary, or drifting boat from which waterfowl are hunted.

(2) "Permanent blind" means any blind which is in place more than twenty-four (24) hours.

(3) "Commercial waterfowl hunting area" means any area of land or water used in whole or in part for the taking of migratory waterfowl where a monetary charge is made for hunting.

(4) "Noncommercial waterfowl hunting area" means any area used in whole or in part for the taking of migratory waterfowl where no monetary charge is made.

(5) "Waterfowl" means all species of ducks, coots, mergansers and geese.

Section 2. [1.] Seasons for Gun and Archery. (1) Sora rails, Virginia rails, common moorhens, and purple gallinules: November 24 [16] through January 20 [16].

(2) Ducks, coots and mergansers: November 24 [26] through November 27 [29] and December 10 [12] through January 4 [16].

(3) Geese.

(a) Eastern Zone: November 24 [8] through January 31 [16], east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, East on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to U.S. 41 and then north on U.S. 41 to the Kentucky-Indiana border.

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

1. Canada Goose Season: December 10 [12] through January 28 [30], unless harvest quotas are met as described below.

a. Ballard Reporting Area. This reporting area lies within the following boundary: starting at the northwest city limits of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe. Should it be determined that the quota of 14,200 [10,400] Canada geese will be filled prior to January 28 [30], the goose hunting season shall [will] close in the Ballard Reporting Area. Notice shall [will] be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

b. Counties associated with the Ballard Reporting Area. The counties associated with the Ballard Reporting Area, those portions of Ballard (excluding Ballard Reporting Area), McCracken, Graves, Carlisle, Hickman, Fulton and Marshall counties in the Western Zone, shall [will] remain open for seven (7) days after the closure of the Ballard Reporting Area or until January 28 [30], whichever occurs first.

c. Henderson-Union Reporting Area. This reporting area includes those portions of Henderson and Union Counties within the Western Zone. Should it be determined that the quota of 4,500 [3,300] Canada geese will be filled prior to January 28 [30], the goose hunting season shall [will] close in the Henderson-Union Reporting Area. Notice shall [will] be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

d. Counties associated with the Henderson-Union Reporting Area. The counties associated with the Henderson-Union Reporting Area, those portions of Lyon, Crittenden and Livingston counties in the Western Zone shall [will] remain open for seven (7) days after the closure of the Henderson-Union Reporting Area or until January 28 [30], whichever occurs first.

2. Season for goose species other than Canada geese (snow and blue geese, white-fronted geese, and brant): November 24 [26] through January 28 [17], or whenever the Canada goose season closes, whichever occurs first.

Section 3. [2.] Limits for Gun and Archery. (1) Ducks [and Mergansers]. The daily bag limit is three (3) and shall include no more than two (2) mallards (no more than (1) of which shall be a female), and one (1) black duck, two (2) wood ducks, one (1) redhead, and one (1) pintail of either sex. Pintail may be taken only during the first four (4) day segment of the season. No canvasbacks shall be taken. [Point system bag and possession limits will be in effect. Point values for species and sexes are as follows:

100 points: mallard hen and black duck.

70 points: redhead, wood duck, and hooded merganser.

35 points: mallard drake, pintail and all species of ducks not listed in other categories.

20 points: all teal species, wigeon, gadwall, shoveler, scaup, and mergansers (except hooded merganser).

The season on canvasbacks is closed.

The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in two (2) days.]

(2) Coots. [Coots have a point value of zero, but] The daily bag limit is fifteen (15) and the possession limit is thirty (30).

(3) Mergansers. The daily bag limit is five (5) of which no more than one (1) shall be a hooded merganser. Possession limit is double the daily bag limit.

(4) [(3)] Geese.

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

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

(5) [(4)] Sora and Virginia Rails. The bag and possession limits are twenty-five (25) singly or in the aggregate.

(6) [(5)] Common Moorhens and Purple Gallinules. The bag and possession limits are fifteen (15) and thirty (30), respectively, singly or in the aggregate of the two (2) species.

Section 4. [3.] Shooting Hours. [One-half (1/2) hour before] Sunrise to sunset for all species listed in this regulation except as

specified in Section 8 [7] of this regulation, and from [one-half (1/2) hour before] sunrise to 3 [2] p.m. for waterfowl [(defined as ducks, geese, and mergansers) and coots] during the Canada goose season in the Ballard Reporting Area.

Section 5. [4.] Shot Size Restrictions. No lead shot larger than BB or steel shot larger than F shall [may] be in possession while hunting the species listed in this regulation.

Section 6. [5.] Falconry Season. November 1 through January 20 [16]. All legal species listed in this regulation may be taken by falconry.

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

(2) Hunting hours for falconry. The hunting hours shall [will] conform with the shooting hours stated in Sections 4 [3] and 8 [7] of this regulation.

Section 7. [6.] Wildlife Management Area Blind [and Pit] Regulations. The following restrictions apply to all wildlife management areas except those excluded in Section 8 [7] of this regulation.

(1) Permanent blinds [or pits] are not permitted. Decoys and temporary blinds shall [must] be removed at the end of each hunting day.

(2) No blind shall [may] be established less than 200 yards from any other blind or waterfowl refuge areas. [For the purposes of this section, an anchored, stationary, or drifting boat from which waterfowl or coots are hunted is considered a blind.]

(3) No more than four (4) persons shall occupy a single blind [or pit] at any one time.

(4) Designated recreation areas and access points are closed to hunting of all species listed in this regulation.

Section 8. [7.] Exceptions for Specified Wildlife Management Areas and Counties. Other sections or regulations apply unless specified below.

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

(a) Species and seasons.

1. Geese: December 12 through January 28.

2. [1. The season for] Ducks, coots and mergansers: [is] December 12 through January 4 [16].

3. [2.] No hunting is permitted on Sundays.

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

(b) General rules. Waterfowl hunters shall have no more than ten (10) shells in their possession. [There will be a ten (10) shell limit per hunter when hunting geese.] Any hunter under the age of eighteen (18) years shall [must] be accompanied by an adult. Any person whose transportation to and from blinds [and pits] is furnished by the department shall [must] have his gun encased. Hunting shall be by advanced application or as otherwise authorized.

(c) Shooting hours: [one-half (1/2) hour before] sunrise to 12 noon.

(2) Swan Lake Wildlife Management Area located in Ballard County. The Upper Blenderman Tract, located to the north of Holloway Landing Road and marked by signs, is open to hunting of all legal species listed in this regulation.

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

(a) Closed areas. Smith Bay, Energy Lake, and Long Creek Pond as indicated by signs are closed to hunting. The eastern two-thirds (2/3) of Duncan Bay on Kentucky Lake is closed to all activity November 1 through March 15, as indicated by signs and buoys. The Environmental Education Center is closed to hunting of all species listed in this regulation.

(b) LBL permit. An annual LBL hunting permit is required for hunting of all legal species listed in this regulation on all shoreline [and inland areas. Shoreline areas are defined as all LBL] areas along Kentucky and Barkley Lakes from the water's edge to twenty-five (25) yards above elevation 359' and inland areas. Waterfowl and coot hunting from shoreline areas along Lake Barkley is allowed according to subsection (4) of this section [Lake Barkley Wildlife Management Area regulations. Inland areas are defined as all areas above shoreline areas]. No hunting of any species listed in this regulation is permitted on inland areas during quota gun deer hunt days as listed in 301 KAR 2:111. Permanent blinds [and pits] are not permitted on inland areas nor along the Kentucky Lake shoreline area. Decoys and temporary blinds shall [must] be removed at the end of each hunting day.

(4) Lake Barkley Wildlife Management Area located in Trigg, Lyon, and Livingston Counties.

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

(b) Blinds [and pits]. Permanent blinds shall [or pits, defined as those which are in place more than twenty-four (24) hours, may be used but must] remain within ten (10) yards of the assigned numbered blind marker within the area described as follows: beginning at the mouth of Donaldson Creek and proceeding south along the east side of the old Cumberland River channel as marked by buoys, to a point due west of the boat ramp at Linton, then east to the Linton boat ramp, then north along the east shore of Barkley Lake to the mouth of Donaldson Creek. All other blinds within this described area shall [must] be temporary.

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

(a) Grassy Pond-Powell's Lake Unit. [Waterfowl and coot] Hunting is permitted only from permanent blinds constructed [or pits registered] by the department. Hunters shall

remove all personal property from blinds or the vicinity of blinds daily.

(b) Jenny Hole-Highland Creek Unit. [Waterfowl and coot] Hunting shall [will] be allowed from permanent blinds constructed [or pit sites registered] by the department and at any other above ground site provided there is a minimum of 200 yards between hunters or hunting parties. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

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

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

(e) Sauerheber Unit. On [except] the Crenshaw and old Duncan Tracts - waterfowl hunting shall be allowed only from permanent blinds constructed by the department. Use of the constructed blinds shall be by drawing unless the person(s) drawn do not occupy the blind by the opening of legal shooting hours. The remainder of the Sauerheber Unit, including [will be closed to all hunting, fishing, boating and trespassing during the period indicated on posted signs. The privately owned in-holding totaling 468 acres and known as] the Wood Tract, located between mile marker 4 and 6 on state road 268 and bounded by the Ohio River on the north and Tram Road on the east [and the Sauerheber Unit of the Sloughs WMA,] is closed to all hunting, fishing, boating and trespassing between October 15 and March 15.

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

(7) Hunting of all species listed in this regulation is not permitted on the following areas:

(a) Ohio River in the vicinity of the Ballard Wildlife Management Area located in Ballard County, from a point fifty (50) yards upstream from Dam 53, downstream to a point fifty (50) yards below the downstream boundary of the Ballard Wildlife Management Area.

(b) That portion of the Grayson Lake Wildlife Management Area located in Carter and Elliott Counties, which lies east of the Little Sandy River and on Bruin Creek portions of Grayson Lake.

(c) Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties.

(d) Cane Creek Wildlife Management Area located in Laurel County.

(e) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties.

(f) Redbird Wildlife Management Area located in Leslie and Clay Counties.

(g) Mill Creek Wildlife Management Area located in Jackson County.

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

(9) Ohio County south of Rough River, Muhlenberg County east of state route 181, [and] Butler County west of state route 79, Pulaski and McCreary Counties east of U.S. Highway 27 and Laurel, Whitley, Perry, Knott and Breathitt Counties are closed to goose hunting.

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

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

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

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

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

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

(e) Permittees shall [will] be selected by drawing at Barkley Lake, Barren Lake, Green River Lake, and Taylorsville Lake Wildlife Management Areas[, and the Grassy Pond-Powell's Lake and Jenny Hole-Highland Creek units of the Sloughs Wildlife Management Area]. Applicants for blind [or pit] permits shall [must] present a current Kentucky hunting license to the registration clerk at the time of the drawing. Sites which become available by forfeiture shall [may] be assigned to another applicant according to the following procedure: five (5) additional names shall [will] be drawn at each area (or the number of remaining names if less than five (5) are present) and any forfeited blinds shall [will] be assigned to those people in the order they were drawn.

(12) White City Wildlife Management Area located in Hopkins County. Waterfowl [and coot] shooting hours are from [one-half (1/2) hour before] sunrise to 2 p.m.

(13) Taylorsville Lake Wildlife Management Area, located in Anderson and Spencer Counties. That portion [of] east of Van Buren Boat Ramp as marked by buoys and signs is closed to all hunting, fishing, boating, and trespassing during the period from November 24 through March 1.

Section 9. [8.] Ballard and Henderson-Union Reporting Area Waterfowl Hunting Permit Requirements. It is unlawful for any person to

hunt waterfowl within the Ballard or Henderson-Union Reporting Areas without first obtaining the appropriate waterfowl hunting permit or waterfowl harvest register forms as specified in subsections (1), (2) and (3) of this section.

(1) Commercial waterfowl hunting areas.

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

(a) [(b)] A commercial waterfowl hunting area permit issued by the department shall [must] be obtained by any person operating a commercial waterfowl hunting area. An annual fee shall [will] be charged for each commercial waterfowl hunting area permit. These permits shall [will] expire at the end of waterfowl hunting season [as stated on the permit].

(b) [(c)] Persons operating more than one (1) commercial waterfowl hunting area shall [must] obtain a permit for each individual area. A land holding divided by a public road may be operated as a commercial waterfowl hunting area under one (1) permit. Whenever a farm unit is divided by land owned by others, a separate permit shall be [is] required for each tract of land operated as a commercial waterfowl hunting area.

(2) Noncommercial waterfowl hunting areas.

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

(a) [(b)] Any person controlling the waterfowl hunting rights and privileges on a noncommercial waterfowl hunting area shall [must] obtain a free migratory goose hunting area permit which shall [will] expire at the end of waterfowl hunting season [as stated on the permit].

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

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

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

(4) Obtaining permits and harvest reporting forms.

(a) Persons desiring commercial waterfowl hunting area permits, migratory goose hunting area permits, or a season supply of waterfowl harvest register forms for the Ballard Reporting Area may apply by writing to the Ballard County Wildlife Management Area, Route 1, LaCenter, Kentucky 42056, and for the Henderson-Union Reporting Area may apply by writing to the Sloughs Wildlife Management Area, RR 2, Box 183A, Corydon, Kentucky 42406.

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

Section 10. [9.] Ballard and Henderson-Union Reporting Area Recordkeeping and Reporting Requirements. (1) Commercial waterfowl hunting area permit holders.

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

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

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

(2) Migratory goose hunting area permit holders.

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

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

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

(3) Hunter requirements.

(a) Persons hunting waterfowl on commercial or noncommercial waterfowl hunting areas in the Ballard or Henderson-Union Reporting Areas shall [must]:

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

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

(b) Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall [must]:

1. Prior to hunting, enter on the waterfowl harvest register form their name and address, or the names and addresses of all hunting party

members if only one (1) hunter is carrying the form for the party, and the date.

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

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

Section 11. [10.] General Rules Concerning Waterfowl Hunting in the Ballard Reporting Area. (1) It is unlawful to hunt waterfowl [or coots] except from a blind [or a pit], unless waterfowl [or coot] hunting is conducted in flooded, standing timber. [For the purposes of this section, a blind or pit is defined as any form of concealing enclosure from which one may shoot game or observe wildlife including an anchored, stationary, or drifting boat from which waterfowl or coots are hunted.]

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

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

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

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

Section 12. [11.] Waterfowl Stamp Requirements. Individuals hunting waterfowl shall [must] possess appropriate state and federal waterfowl stamps as stipulated in KRS 150.330 and 150.603.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman

APPROVED BY AGENCY: September 15, 1988

FILED WITH LRC: September 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on October 25, 1988 at 10 a.m. in the Commission Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Mr. Lauren E. Schaaf, Director, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: Approximately 14,000 persons will participate in the migratory bird hunting proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp, and a state duck stamp. Approximately 25 commercial waterfowl hunting area operators will be required to purchase a permit. Indirect costs are determined by the individual hunter, depending upon his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license ($8.50 for residents) unless exempted by statute, a $10 migratory bird hunting and conservation stamp, and a $5.25 state duck stamp. Commercial waterfowl hunting operators will be required to purchase a $40 permit each.

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

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

(b) Reporting and paperwork requirements: Approximately 7,500 waterfowl hunters within the Ballard and Henderson-Union reporting areas will be required to register prior to hunting waterfowl and to report their harvest on forms provided by the department.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, report monitoring and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation and administering the harvest registration zones.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $275,000.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: A biweekly monitoring of harvest registration forms will involve tabulation of forms submitted in the Ballard and Henderson-Union reporting areas. Permits will be issued to approximately 500 individuals and landowners.

(3) Assessment of anticipated effect on state and local revenues: Approximately 14,000 waterfowl hunters may be expected to expend money for equipment, transportation, food and lodging. The average annual expenditure for these items is $110 per migratory bird hunter according to the National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds occur through a regulated hunting season that is held within a specific timeframe. Therefore, the only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that the involved species populations are at levels which can sustain a regulated harvest by Kentucky sportsmen. The regulated hunting alternative selected is that which will provide the most opportunity to Kentucky waterfowl hunters while affording necessary protection to the waterfowl resource.

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

(a) Necessity of proposed regulation if in conflict: 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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 53, No. 156, Friday, August 12, 1988.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 30 day season between October 8, 1988 and January 8, 1989. Season may be split into more than 2 segments. The daily bag limit of ducks is 3 and may include not more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 2 wood ducks, 1 redhead, and 1 pintail of either sex. Possession limit shall be twice the daily bag or 6 ducks. The season on canvasbacks is closed. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (of which only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Sora and Virginia rails, common moorhens and purple gallinules: Season shall not exceed 70 days between September 1, 1988 and January 20, 1989, with the option to split into 2 segments. The daily bag limit for rails shall be 25 with the possession limit also being 25, singly or in the aggregate of the two species. The daily limit for common moorhens and purple gallinules shall be 15 with the possession limit being twice the daily bag, singly or in the aggregate of the 2 species.

Geese: Western Zone season may extend for 50 days between October 1, 1988 and January 31, 1989, or until the harvest of 22,500 birds is taken, whichever occurs first. The daily bag limit shall be 5 geese, to include no more than 2 white-fronted geese. Eastern Zone season may extend for 70 days between October 1, 1988 and January 31, 1989. The daily bag limit shall be 2 Canada geese with the possession limit being 4.

Shooting hours shall be sunrise to sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1988 and March 10, 1989 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Duck, coot and merganser season conforms with the federal frameworks except that the pintail season is closed for the second 26 day segment of the season. This was done due to the depressed pintail population and the paucity of pintails present in Kentucky at the time of the second split.

The goose season in the eastern zone is only 69 days. This was done to coordinate the season with other migratory bird seasons and thereby ease law enforcement conflicts of having hunters in the field when other seasons were closed.

Shooting hours for geese in the Ballard Reporting Area is from sunrise to 3 p.m. in order to allow birds to feed off of refuge areas and facilitate wider harvest patterns. This will also allow birds from adjoining states to enter Kentucky from their refuges and utilize our refuges undisturbed and allowing hunters a chance to harvest them on the succeeding day or days if they stay.

The goose season on the Ballard Wildlife Area is 1 day shorter than the western zone so that controlled hunts may commence at the beginning of a week and not undergo interruption after starting.

Rail, common moorhen and purple gallinule seasons are 58 days in length in order to coordinate opening with the duck, coot, merganser and goose seasons and extend them to the end of the allowable federal framework.

All other aspects of Kentucky's migratory bird seasons conform to federal frameworks or requirements for quota monitoring.

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.

Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates.

This activity relates to KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides?

Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures beyond those necessary to enforce laws.

TOURISM CABINET
Department for Fish & Wildlife Resources
(Proposed Amendment)

301 KAR 3:021. Hunting and fishing license fees.

RELATES TO: KRS 150.025, 150.175, 150.225, 150.237, 150.240, 150.280, 150.290, 150.525, 150.660

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: The commissioner, with the concurrence of the Fish and Wildlife Resources Commission, finds it necessary to establish the hunting and fishing license fees schedule in this regulation to generate the necessary funds to finance programs to protect, manage, and conserve the fish and wildlife resources of the state so a permanent and continued supply will be maintained for the benefit of present and future generations. The purpose of this amendment is to specify valid dates for these licenses, tags and permits, to delete the Ohio River commercial fishing license and Ohio River gear tag, to increase turkey permit fees, to list fees for buyer/seller taxidermist licenses and to increase the fee for

scientific collecting permit. [add a fee for a single day shoot to retrieve field trial, raise fees for big game (deer) permits, add junior big game (deer) permits.]

Section 1. License, tag, permit and stamp fees [for hunting and fishing] are as follows:

[The following sport fishing license fees will be effective January 1, 1988:]

(1) Sport fishing licenses:

Statewide fishing license (resident): $8.50

Statewide fishing license (nonresident): $20.00

Joint statewide fishing license (resident): $15.30

Ohio River fishing license (resident Ohio, Indiana and Illinois only): $8.50

3-day fishing license (nonresident only): $7.50

15-day fishing license (nonresident only): $12.50

Trout stamp (resident or nonresident): $3.50

(2) Commercial fishing licenses:

Commercial fishing license (resident) plus ten (10) commercial gear tags: $72.00

Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: $500.00

[Ohio River commercial fishing license (resident Ohio, Indiana and Illinois only) plus ten (10) Ohio River commercial gear tags: $72.00]

(3) Commercial fishing gear tags (not to be sold singly):

Commercial fishing gear tag (resident) blocks of 10 tags: $6.50

Commercial fishing gear tag (nonresident) blocks of 10 tags: $58.00

[Ohio River commercial fishing gear tag (resident Ohio, Indiana and Illinois only) block of ten (10) tags: $21.50]

(4) Special [experimental] commercial fishing permit: $500.00

(5) Live fish and bait dealers licenses:

Live fish and bait dealers license (resident) Separate license required for each place of business: $25.50

Live fish and bait dealers license (nonresident): $42.50

[The following mussel license fees will be effective January 1, 1988:]

(6) Mussel licenses:

Musseling license (resident): $100.00

Musseling license (nonresident): $500.00

Mussel buyer's license (resident): $100.00

Mussel buyer's license (nonresident): $300.00

(7) Hunting licenses:

Statewide hunting license (resident): $8.50

Statewide hunting license (nonresident): $75.00

Statewide hunting license, small game only (5-day nonresident): $20.00

Statewide junior hunting license (resident only): $4.00

Statewide waterfowl stamp: $5.25

(8) Hunting and fishing license (combination resident): $15.00

(9) Trapping licenses:

Trapping license (statewide resident): $11.50

Trapping license (resident landowner/tenant): $6.00

Trapping license (nonresident): $115.00

Trap tags, each (resident or nonresident): $.20

(10) Big game licenses:

Big game permit, deer (resident or nonresident): $17.50

Junior big game permit, deer (resident or nonresident): $11.50.

Big game permit, turkey (resident or nonresident): $15.00 [6.50]

(11) Taxidermist licenses:

Regular taxidermist license: $11.50

Buyer/seller taxidermist license: $150.00

(12) Commercial guide licenses:

Commercial guide license (resident): $14.50

Commercial guide license (nonresident): $42.50

(13) Fur dealer's licenses:

Fur processor's license (resident): $150.00

Fur buyer's license (resident): $30.00

Fur buyer's license (nonresident): $230.00

(14) Special nonresident hunting preserve license valid only for preserve issued (not required if hunter has valid hunting license): $8.50

(15) Kentucky regulated shooting preserve permit: $35.00

(16) Commercial fox hound training enclosure permit: $250.00

(17) Pet and propagation permit [for game and fish]:

Pet and propagation permit [for game and fish], noncommercial: $6.00

Pet and propagation permit [for game and fish], commercial: $30.00

(18) [Scientific fish and wildlife] Collecting permits:

Educational [Scientific fish and wildlife] collecting permit[, educational]: $3.00

Scientific [Scientific fish and wildlife] collecting permit[, scientific]: $150.00 [115.00]

(19) Food permits:

Food permit for selling bobwhite quail from propagation farms only: $150.00

Retail food permit for propagated quail: $2.50

(20) Commercial waterfowl shooting area permit (operator's license): $40.00

(21) Falconry permit (birds of prey): $12.00

(22) Pay lake license (minimum $50 for first two (2) acres or less; $10 per additional acre or part thereof, up to maximum of $100

(23) Shoot to retrieve field trial permit (per trial, maximum four (4) days): $50.00

Shoot to retrieve field trial permit (single day): $15.00.

(24) Bird dog training device permit: $2.50

Section 2. Except for scientific or educational collecting permits as specified in 301 KAR 4:070 the [kind of] licenses, permits, stamps or tags authorized by this regulation shall not be changed, altered, or defaced in any manner[, except the trout stamp and waterfowl stamp, which must carry the licensee's signature in ink across the face of stamp and be attached to the back of the proper fishing or hunting license]. All licenses, permits, tags, and stamps are nontransferable.

Section 3. Unless otherwise specified below, the licenses, tags, and permits listed in this regulation shall expire on December 31 of the year issued.

(1) Those licenses, tags, permits and stamps listed in Section 1(1), (2), (3), (7), (8), (9) and (10) of this regulation, except short-term nonresident licenses, shall be valid from March 1 through the last day of February the following year, except that those issued for the 1989 license year shall be valid from January 1, 1989 through February 28, 1990.

(2) Those licenses, tags and permits listed in Section 1(17) and (21) of this regulation shall be valid for one (1) year from date of issue.

(3) Short-term nonresident licenses, special

commercial fishing permits, commercial waterfowl area shooting permits and shoot-to-retrieve field trial permits shall be valid only for the date specified on each license.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman
APPROVED BY AGENCY: September 15, 1988
FILED WITH LRC: September 15, 1988 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 25, 1988 at 2 p.m. in the Commission Room, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall notify this agency in writing by October 20, 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 to: Lauren Schaaf, Director, Wildlife Division, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
NOTE: There are five discrete amendments to this regulation. Each will be indicated as follows:
(A) Change in license year.
(B) Elimination of Ohio River Commercial Fishing License.
(C) Creation of buyer/seller taxidermist license.
(D) Increase in cost of turkey permit.
(E) Increase in cost of scientific collecting permit.
(1) Type and number of entities affected: (A) All resident and nonresident sportsmen hunting or fishing in Kentucky. (B) Residents of Ohio, Indiana and Illinois who fish commercially in the Ohio River. In 1987, 26 Ohio River commercial fishing licenses were sold. (C) There are about 379 taxidermists licensed in Kentucky. (D) Approximately 5,500 persons will participate in the wild turkey hunting proposed by this regulation. (E) Approximately 80 individuals, institutions or organizations shall be regulated by the new rules and fees on collecting permits.
(a) Direct and indirect costs or savings to those affected:
1. First year: (A) Sportsmen will receive an additional two months of hunting and fishing on their 1989 licenses at no extra cost as the transition to a March-February license year is made. (B) Nonresident commercial fishermen would have to purchase a regular nonresident commercial fishing license at a cost increase of $428. If their resident states have, or adopt, commercial licenses, these may be used in the Ohio river in lieu of a Kentucky license. (C) Since this is a new regulation, governed by a new statute, it is not known how many will opt for the newly required buyer/seller taxidermist license. Those who do not opt to purchase the buyer/seller taxidermist license will continue to purchase a regular taxidermist license and will not be impacted by the new fees. Those who opt to buy the new buyer/seller taxidermist license will be assessed an additional $138.50. (D) Direct costs involve the purchase of a state hunting license and a wild turkey permit. Indirect costs are determined by the individual hunter, depending upon his level of participation. Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license ($8.50 for residents) and wild turkey permit ($15) unless exempt by regulations. Cost of the turkey permit is increased from $6.50 to $15, an increase of $8.50. (E) Fees for scientific collecting permits are raised $35. Fees for educational collectors are not changed.
2. Continuing costs or savings: (A) No change after 1989. (B) Same as first year. (C) Those who do not opt to purchase the buyer/seller taxidermist license will continue to purchase a regular taxidermist license and will not be impacted by the new fees. Those who opt to buy the new buyer/seller taxidermists license will be assessed an additional $138.50. (D) Same as first year. (E) Scientific collectors shall continue to be assessed $35 more than before but educational collectors shall be charged the same fee as before.
3. Additional factors increasing or decreasing costs (note any effects upon competition): (A), (B), (C), (D), and (E) - None.
(b) Reporting and paperwork requirements: (A) No change from current system. (B) Ohio River commercial licenses will no longer have to be printed, distributed to county clerks or audited. (C) Those who do not opt to purchase the buyer/seller taxidermist license will continue to purchase a regular taxidermist license and will incur less reporting requirements due to their not having to send in monthly reports. Those who opt to buy the new buyer/seller taxidermist license will have to report those wildlife parts purchased on a monthly basis but will no longer have to report all specimens mounted. Both will, however, have to keep such items on their books for five years; a requirement that they had before this regulation was changed. (D) None. (E) Collector regulations require annual reports of activities and species taken. This shall require additional paperwork for permit holders. However, it is assumed that the information collected is kept by the collector in a tabulated form anyway. The only obligation shall be to provide it to the department annually.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: (A) The two-month delay in license purchases the first year would result in a loss of earned interest of approximately $7,000 to $8,000. (B) A savings in the cost of printing this license and approximately 5 man-days involved in distributing and auditing. (C) No increases over and above those now incurred in administering taxidermist licenses will occur. (D) Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation. Primary costs are associated with enforcing the regulation and those costs are fixed. (E) Slight administrative work increase due to new commercial collecting permit requirement. Postage and handling for

collector fees shall be $10-15 per year. Other costs such as secretarial and mail clerk assistance is fixed. Slight administrative work increase due to new commercial nuisance wildlife permit requirement.

2. Continuing costs or savings: (A) Same as with current license year. (B) Same as 1, above. (C) The number of taxidermists who opt to purchase the buyer/seller taxidermists license will continue to generate an additional $138.50 to the department annually. (D) Same as first year. (E) Slight administrative work increase due to new commercial nuisance wildlife permit requirement.

3. Additional factors increasing or decreasing costs: (A) License sales and administrative costs should remain the same. (B) Loss of approximately $2,000 annually. (C) None. (D) None. (E) There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: (A) No change. (B) Same as above. (C) There will be a decrease in paperwork to the agency from not having to file monthly reports on specimens mounted. Reports from purchased goods, however, will continue to be filed monthly. (D) None over and above those now required. (E) None over nd above those now required.

(3) Assessment of anticipated effect on state and local revenues: (A) None. (B) None. (C) Overall state and local revenues will be unaffected except for the revenue generated to the local and state economies due to the ability to buy and sell wildlife parts and mounted specimens. The level of income that will be generated cannot be estimated at this time. Department income will increase. (D) Approximately 5,500 turkey hunters may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items averages $46 per day of big game hunting according to the 1985 National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to the necessary expenditures for the required licenses and taxes levied upon items purchased by hunters. (E) Changes shall increase revenues to the department by approximately $700 but will have no impact on general state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (A) Alternative license years (including the current calendar year system) would split a major season. The March-February license year does not force either hunters or fishermen to purchase new licenses in the middle of a season. (B) No other alternatives would accomplish desired objectives. (C) Taxidermists could have been required to purchase only a regular taxidermists license and not incurred additional fees. In order to maintain consistency with others who may buy and sell wildlife hides, it seemed prudent to require buyers and sellers of wildlife parts for taxidermy purposes to purchase a license with an equivalent cost or $150. (D) The only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that wild turkey populations are at levels which can sustain a regulated harvest by Kentucky sportsmen. (E) Do nothing. Wildlife collectors can provide a valuable service to the department by providing information on species collection sites for incorporation into distribution records. Therefore, the change to require reporting was made.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: (A) None. (B) None. (C) There will be no overlap or conflict with other statutes or regulations. This regulation is being promulgated to clarify provisions of KRS 150.175 and 150.411. (D) None known. (E) None known.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? 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____ No__X_

2. State whether this administrative regulation will affect the local government or only a part or division of the local government.

Not applicable.

3. State the aspect or service of local government to which this administrative regulation relates.

Not applicable.

4. How does this administrative regulation affect the local government or any service it provides?

The selling of hunting and fishing and related licenses tend to encourage hunters and fishermen to expend monies of local goods and services. This would tend to stimulate state and local tax revenues. Hunters and fishermen depend upwards to $525 million dollars annually participating in the sports authorized by the licenses described here. State and local taxes would increase accordingly.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 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 September 13 [August 12], 1988 and hereinafter should be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

1.1 Legal Assistance for Corrections Staff
1.2 News Media (Amended 9/13/88)
1.4 The operation of Contracted Adult Correctional Facilities [(Added 8/12/88)]
1.6 Extraordinary Occurrence Reports
1.9 Institutional Duty Officer
1.11 Population Counts and Reporting Procedures
1.12 Operation of Motor Vehicles by Corrections Cabinet Employees
2.1 Inmate Canteen
2.2 Warden's Fund
2.10 Surplus Property
3.1 Code of Ethics
3.2 Inclement Weather and Emergency Conditions Policy
3.3 Holding of Second Jobs by Bureau Employees
3.10 Staff Clothing and Personal Appearance
3.12 Institutional Staff Housing
3.14 Corrections Cabinet Payroll Deduction Policy and Procedure
4.1 Attendance at Professional Meetings
4.2 Staff Training and Development
4.3 Firearms and Chemical Agents Training
4.4 Educational Assistance Program
6.1 Open Records Law
7.2 Asbestos Abatement
8.4 Emergency Preparedness
9.1 Use of Force
9.3 Transportation of Convicted Offenders
9.4 Transportation of Inmates to Funerals or Bedside Visits
9.6 Contraband
9.7 Storage, Issue and Use of Weapons Including Chemical Agents
9.8 Search Policy
9.9 Transportation of Inmates [(Amended 8/12/88)]
9.10 Security Inspections
9.11 Tool Control
9.15 Institutional Entry and Exit Policy and Procedures
9.18 Informants
9.19 Found Lost or Abandoned Property
10.2 Special Management Inmates
10.3 Safekeepers
10.4 Special Needs Inmates
11.2 Nutritional Adequacy of the Diet for Inmates
11.3 Special Diet Procedures
13.1 Pharmacy Policy and Formulary
13.2 Health Maintenance Services
13.3 Medical Alert System
13.4 Health Program Audits
13.5 Acquired Immune Deficiency Syndrome
14.2 Personal Hygiene Items
14.3 Marriage of Inmates
14.4 Legal Services Program
14.6 Inmate Grievance Procedures [(Amended 8/12/88)]
15.1 Hair and Grooming Standards
15.2 Offenses and Penalties
15.3 Meritorious Good Time
15.5 Restoration of Forfeited Good Time
15.6 Adjustment Procedures and Programs
16.1 General Inmate Visiting Procedure
16.2 Inmate Correspondence
16.3 Telephone Calls
16.4 Inmate Packages
17.1 Inmate Personal Property [(Amended 8/12/88)]
17.2 Assessment Center Operations
17.3 Controlled Intake of Inmates
18.4 Classification of the Inmate
18.5 Custody/Security Guidelines
18.6 Classification Document
18.7 Transfers
18.8 Guidelines for Transfers Between Institutions
18.9 Out-of-State Transfers
18.10 Preparole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
18.15 Protective Custody
19.1 Government Services Projects
19.2 Community Services Projects
20.1 Study Release
20.6 Vocational Study Release
22.1 Privilege Trips
25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease
25.4 Inmate Furloughs [(Amended 8/12/88)]
25.6 Community Center Program [(Amended 8/12/88)]
25.7 Expedient Release
25.8 Extended Furloughs
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers
27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services
27-07-01 Cooperation with Law Enforcement Agencies
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision
27-11-01 Intensive Supervision [(Amended 8/12/88)]
27-12-01 Supervision: Case Classification
27-12-02 Risk/Needs Assessment
27-12-03 Initial Interview
27-12-04 Conditions of Regular Supervision/Request for Modification
27-12-05 Releasee's Report
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan
27-12-09 Casebook
27-12-10 Guidelines for Monitoring Supervision Fee
27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13 Community Service Work
27-12-14 Client Travel Restrictions
27-13-02 Alcohol Detection
27-14-01 Interstate Compact Transfers
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
27-15-01 Supervision Report; Violations, Unusual Incidents
27-17-01 Absconder Procedures
27-18-01 Probation and Parole Issuance of Detainer/Warrant
27-19-01 Preliminary Revocation Hearing
27-20-01 Division of Probation and Parole Controlled Intake Program
27-20-02 Prisoner Intake Notification
27-20-03 Prisoner Status Change

27-21-01	Apprehension and Transportation of Probation and Parole Violators
27-22-01	Fugitive Unit - Apprehensions
27-22-02	Fugitive Unit - Transportation of Fugitives
27-23-01	In-state Transfer
27-24-01	Closing Supervision Report
27-24-02	Reinstatement of Clients to Active Supervision
27-25-01	Application for Final Discharge from Parole
27-26-01	Assistance to Former Clients and Dischargees
27-27-01	Restoration of Civil Rights
27-28-01	Firearms/Explosives: Application for Relief from Disability
27-29-01	Parole Review Dates Modification
28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports [(Added 8/12/88)]
28-02-01	Expedient Release Program
28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: September 13, 1988
FILED WITH LRC: September 13, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 25, 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: 2229 employees of the Corrections Cabinet, 5969 inmates, 11,260 parolees and probationers, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the 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 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: 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 September 13 [July 14], 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 (Deleted 9/13/88)]
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 (Amended 9/13/88)
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 08-00-10 Hazardous Chemicals and Material Safety Data Sheet (Added 9/13/88)
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
KSR 09-00-22 Collection, Preservation, and Identification of Physical Evidence [(Amended 7/14/88)]
KSR 09-00-23 Drug Abuse Testing
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 (Amended 9/13/88)
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 (Amended 9/13/88)
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 (Amended 9/13/88)
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 (Amended 9/13/88)
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations (Amended 9/13/88)
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
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: September 13, 1988
FILED WITH LRC: September 13, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 25, 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: 565 employees of the Kentucky State Reformatory, 1422 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
STATUTORY AUTHORITY: 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 September 13 [July 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 02-07-02	Chapel Fund (Added 9/13/88)
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 03-19-01	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 (Amended 9/13/88)
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 (Amended 9/13/88)
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 (Amended 9/13/88)
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 9/13/88)
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 (Amended 9/13/88)
NTC 14-01-02	Video Viewing of Trials (Added 9/13/88)
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 (Amended 9/13/88)
NTC 15-02-01	Due Process/Disciplinary Procedures
NTC 15-02-02	Extra Duty Assignments (Amended 9/13/88)
NTC 15-02-03	Hearing Officer (Amended 9/13/88)
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 (Amended 9/13/88)
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 (Amended 9/13/88)
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
NTC 20-02-02	Live Work Projects in Vocational School Classes (Added 9/13/88)
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
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: September 13, 1988
FILED WITH LRC: September 13, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 25, 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: 275 employees of the Northpoint Training Center, 920 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
STATUTORY AUTHORITY: 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 September 13 [July 14], 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
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
WKFC 12-01-01	Inmate Clothing
WKFC 13-00-01	Special Health Programs
WKFC 13-01-01	Use of Pharmaceutical Products
WKFC 13-02-01	Health Care Services
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 (Amended 9/13/88)
WKFC 16-02-01	Inmate Correspondence (Amended 9/13/88)
WKFC 16-03-01	Inmate Access to Telephones
WKFC 16-04-01	Inmate Packages
WKFC 17-01-01	Inmate Personal Property
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
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: September 13, 1988
FILED WITH LRC: September 13, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 25, 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 Western Kentucky Farm Center, 323 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
(Proposed Amendment)

600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet.

RELATES TO: KRS 56.610 to 56.760[, 174.080, 183.024, Section 1 of Senate Bill 16 of 1986 General Assembly]
STATUTORY AUTHORITY: KRS 56.610 to 56.760
NECESSITY AND FUNCTION: [Pursuant to KRS 56.610 to 56.760, as amended by the 1986 General Assembly,] The Transportation Cabinet is required to adopt administrative regulations and procedures to implement the provisions of KRS 56.610 to 56.760 with regard to providing for uniform relocation assistance services and compensation to persons displaced by the land acquisition programs of the Transportation Cabinet.

Section 1. The Transportation Cabinet [does hereby] adopts [and incorporate by reference] the federal regulations relating to uniform relocation assistance that are set forth in 49 CFR Part 25 which became effective April 28, 1986. The cabinet does also adopt [and incorporate by reference] Appendix A of 49 CFR Part 25, effective April 28, 1986 as it relates to uniform relocation assistance. Payments shall be made and services shall be provided to persons displaced by land acquisition programs on all projects of the Transportation Cabinet in the instances and upon the conditions set forth in the adopted [incorporated] federal regulations.

Section 2. The payments and services set forth above which involve a Transportation Cabinet project shall be made regardless of whether federal funds are used or not used [do or do not participate] in the project.

Section 3. (1) A person may file a written appeal and request for hearing with the Transportation Cabinet in any case in which the person believes that the cabinet has failed to properly determine his eligibility for, or the amount of the payment required under the provisions of this administrative regulation. The Transportation Cabinet shall consider a written appeal regardless of form. The appeal shall be filed within seventy-five (75) days of the date of his written notice of the Transportation Cabinet's determination on the person's claim.
(2) A person may be represented by legal counsel or other representative in connection with his appeal, but solely at his own expense.
(3) The Secretary of the Transportation Cabinet shall appoint a hearing officer for the purpose of conducting the hearing and making a recommendation to the secretary with reference to the appeal. At the hearing, technical rules of evidence shall not apply. However, the hearing officer shall be authorized to issue rulings regarding the competency, relevancy and materiality of the evidence to be presented at the hearing. A record of all evidence introduced at the hearing shall be made by the

Transportation Cabinet.

(4) The hearing officer shall make findings of facts, conclusions of law and a recommended decision on the disposition of the appeal. A copy of this shall be made available to all parties concerned, including the person requesting the hearing and the attorney representing the Transportation Cabinet in this appeal procedure. They shall have twenty (20) days in which to comment on or object to the hearing officer's recommended decision. These comments or objections shall be presented in writing.

(5) The Transportation Secretary or his representative, who shall not have been directly involved in the action appealed, shall consider not only the hearing officer's recommended decision but also any written comments received from the involved parties in making his final ruling. [All documents incorporated by reference herein are on file for public inspection in the offices of the Transportation Cabinet, Division of Right of Way, State Office Building, Frankfort, Kentucky 40622.]

[Section 4. This administrative regulation shall not be effective until July 15, 1986, or later.]

MILO D. BRYANT, Secretary/Commissioner
O. GILBERT NEWMAN, State Highway Engineer
APPROVED BY AGENCY: September 14, 1988
FILED WITH LRC: September 15, 1988 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on October 25, 1988 at 9 a.m., local prevailing time in the 4th Floor Hearing Room of the State Office Building. The State Office Building is located on the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this meeting must in writing by October 20, 1988, so notify this agency. 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. If the hearing is held, written comments will be accepted until the close of the hearng. If the hearing is cancelled, written comments will only be accepted until October 20, 1988. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 persons displaced or relocated because of Transportation Cabinet land acquisition projects.

(a) Direct and indirect costs or savings to those affected: The amendment formalizes the appeal procedure that the cabinet has followed for years. However, it allows a person affected to try to obtain additional benefits to which he may be entitled.

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: If the person chooses to appeal a decision of the cabinet, that appeal must be in writing.

(2) Effects on the promulgating administrative body: None, since this has been the policy of the cabinet for many years.

(a) Direct and indirect costs or savings: The amendment to the regulation formalizes the appeal procedure and allows a cost to be incurred but none that has not been incurred for years.

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: The do-nothing alternative was rejected because the Attorney General pointed out that the regulation should contain a procedure to appeal the cabinet's decisions.

(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 Administration and Finance
(Proposed Amendment)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: KRS 156.070 gives the State Board for Elementary and Secondary [of] Education the management and control of the common schools, including interscholastic athletics therein, and allows the state board to designate an agency to manage athletics pursuant to rules approved by the state board. This regulation designates such an agent for high school athletics and adopts the constitution, bylaws, procedures and rules of that [said] agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) is hereby designated as the State Board for Elementary and Secondary [of] Education's agent to manage interscholastic athletics at the high school level in the common schools, including any private schools desiring to associate [there]with KHSAA and to compete with the [said] common schools.

Section 2. The constitution, bylaws, [and] tournament rules, due process procedures, and officials' rules of the KHSAA Handbook, 1988-89,

[1987-88] are hereby approved, adopted, and incorporated herein by reference. This material may be inspected and copied at the Office of Instruction, Department of Education, 17th Floor, Capital Plaza Tower, Frankfort, 8 a.m. - 4:30 p.m., Monday - Friday. [A copy of said rules may be obtained from the Office of Local Services, Department of Education, Frankfort, Kentucky 40601.]

HENRY POGUE IV, Chairman
APPROVED BY AGENCY: September 14, 1988
FILED WITH LRC: September 15, 1988 at 11 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Friday, October 21, 1988, at 10 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board for Elementary and Secondary Education at its September meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before October 16, 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 240 member high schools.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No additional requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Uniform rules and regulations apply to all high schools competing in interscholastic athletics in interests of fairness and consistency of treatment and results of athletic competition.

PUBLIC PROTECTION & REGULATION CABINET
State Racing Commission
(Proposed Amendment)

810 KAR 1:012. Horses.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the requirements for horses entered to be raced.

Section 1. Registration Required. No horse may be entered or raced in this state unless duly registered and named in the registry office of the Jockey Club in New York and unless the registration certificate or racing permit issued by the Jockey Club for such horse is on file with the racing secretary; except, however, the stewards may for good cause, in their discretion, waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction. Jockey Club registration certificate of each horse must be filed with the horse identifier within forty-eight (48) hours after the horse's arrival on the grounds.

Section 2. Ringers Prohibited. (1) No horse may be entered or raced in this state designated by a name other than the name under which such horse is currently registered with the Jockey Club in New York. In the event a horse's name is changed by the Jockey Club, such horse's former name shall be shown parenthetically in the daily race program the first three (3) times such horse races after such name change.
(2) No person shall at any time cause or permit the correct identity of a horse to be concealed or altered, nor shall any person refuse to reveal the correct identity of a horse he owns, or which is in his care, to a racing official or member of the regular news media.
(3) No horse shall race in this state without a legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau effective January 1, 1989. Prior to January 1, 1989 [; except, however], the stewards may for good cause, in their discretion, waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction. [The stewards shall require that a horse without a lip tattoo number be lip tattooed within a reasonably practical time.]
(4) No horse may be entered or raced in this state if previously involved in a "ringer" case to the extent that: a person having control of such horse knowingly entered or raced such horse while designated by a name other than the name under which such horse was registered with the Jockey Club; or such person having control of such horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to such horse in question.

Section 3. Denerving. (1) Any horse on which a neurectomy has been performed shall have such fact designated on its registration certificate or racing permit. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the trainer of such denerved horse to insure that such fact is designated on the registration certificate or

racing permit.

(2) Any horse whose ulnar, radial, or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed bilaterally, shall not be entered or raced in this state.

(3) Any horse whose volar or plantar nerve has been removed unilaterally or which has had a posterior digital neurectomy (known as low nerved), may be permitted to race provided such denerving has been reported by the trainer to the stewards, and such horse has been approved for racing by the commission veterinarian prior to being entered for a race.

(4) In the event a horse races in violation of this rule and participates in the purse distribution, then no protest thereon will be considered unless submitted in writing to the stewards within forty-eight (48) hours after such race.

(5) In the event a horse races in violation of this rule and is claimed, then no protest thereon will be considered unless the successful claimant submits such protest in writing forty-eight (48) hours requesting the claim be voided. Should the claim be voided, the horse shall be returned to the owner who started such horse in such race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be posted in the racing secretary's office. No person shall report a horse as having a neurectomy when in fact such horse has not.

Section 4. Bleeders. Effective January 1, 1989, any horse that bleeds either [known to have bled from its nostrils] during or after a race or workout that is not on bleeder medication may race on bleeder medication at the discretion of the commission veterinarian. Horses that bleed while on bleeder medication shall be placed on the veterinarian's list and shall remain on the list until removed by the commission veterinarian after consultation with the practicing veterinarian. If the commission veterinarian and the practicing veterinarian disagree on the removal of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the chairman of the commission or his designee and his opinion shall be delivered to the secretary of the commission or his designee who shall then decide the issue. [may not be entered or raced without prior approval for racing by the commission veterinarian. In the event a horse bleeds a second time, such horse shall be placed on the veterinarian's list and prohibited from racing for a minimum of six (6) months; in the event a horse bleeds a third time, such horse shall be thereafter prohibited from racing in this state.]

Section 5. Health Certificate Required. No horse may be stabled on association grounds unless, within ten (10) days prior to arrival on association grounds, such horse has been examined by an accredited practicing veterinarian who certifies as to the identity of such horse, temperature at time of examination, and that to the best of his knowledge and belief such horse is free from any infectious or contagious disease or exposure thereto and observable ectoparasites, and further certifies as to such other matters as may be required from time to time by the Kentucky State Veterinarian in Frankfort. Notice of this requirement shall accompany stall applications and be included in the condition book.

Section 6. Workouts. No horse may be schooled in the paddock, or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 7. Age Restrictions. No maiden six (6) years of age or older which has made five (5) life time starts on the flat may be entered or start.

Section 8. Fillies and Mares Bred. Any filly or mare that has been covered by a stallion shall be so reported to the racing secretary prior to being entered in a race. A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office. No filly or mare that has been covered by a stallion may be entered in a claiming race unless a written release from the stallion owner is attached to such filly or mare's registration certificate indicating that the stallion service fee has been paid or satisfied.

Section 9. Serviceable for Racing. No horse may be entered or raced that:

(1) Is not in serviceable, sound racing condition. The stewards may at any time cause a horse on association grounds to be examined by a qualified person.

(2) Is posted on a veterinarian's list, or stewards' list, or starter's list, or is suspended, in any racing jurisdiction.

(3) Has been administered any drug in violation of 810 KAR 1:018.

(4) Is blind or has seriously impaired vision in both eyes.

(5) Is not correctly identified to the satisfaction of the stewards.

(6) Is owned wholly or in part by, or is trained by, an ineligible person.

Section 10. Equipment. (1) Whips and blinkers must be used consistently on a horse. Permission to change use of any equipment used on a horse in its last previous start must be obtained from the stewards. A horse's tongue may be tied down during a race with a clean bandage or gauze. A horse's bridle may weigh no more than two (2) pounds; war bridles are prohibited. No horse may race in ordinary training shoes; bar shoes may be used for racing only with permission of the stewards.

(2) Use on a horse either in a race or workout of any goading device, or chain, or spurs, or electrical or mechanical device, or appliance other than the ordinary whip which could be used to alter the speed of such horse, is prohibited.

(3) No whip shall be used that weighs more than one (1) pound or is longer than thirty (30) inches with one (1) popper. No stingers or projections extending through the hole of a popper or any metal part on a whip shall be permitted. Indiscriminate or brutal use on a horse of an ordinary whip, as determined by the stewards in their sole discretion, is prohibited.

Section 11. Sex Alteration. Any alteration in the sex of a horse must be reported by such horse's trainer to the racing secretary

promptly, and the racing secretary shall note same on such horse's registration certificate.

Section 12. Postmortem Examination. Each horse which suffers a breakdown on the race track,in training, or in competition, and is destroyed, and/or each horse which expires while stabled on a race track under jurisdiction of the Racing Commission, shall undergo a postmortem examination at the University of Kentucky at the discretion of the commission steward and/or the commission veterinarian.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: August 19, 1988
FILED WITH LRC: August 29, 1988 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 24, 1988 at 10 a.m. at the Commission Offices at the Kentucky Horse Park. Individuals interested in attending this hearing shall notify this agency in writing by October 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. 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: Michael A. Fulkerson, Kentucky State Racing Commission, P.O. Box 1080, Lexington, Kentucky 40588.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gene Glass
(1) Type and number of entities affected: 5,389 licensed Kentucky owners.
(a) Direct and indirect costs or savings to those affected: Requiring a lip tattoo before a first start rather than the second start doesn't increase the cost of the tattoo but does cause the owner to pay for it sooner. This is a once in a lifetime cost as far as a horse is concerned. The current requirements for horses that bleed are simplistic and do not allow for individual circumstances. The new regulation will allow the veterinarians to tailor restrictions on racing to the individual horse thereby saving some owners money. This savings will occur every year.
1. First year: See above.
2. Continuing costs or savings: See above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Since it applies to all owners (and horses), there is no effect on competition.
(b) Reporting and paperwork requirements: Such requirements would be incurred by KSRC staff and will not consume more time than current requirements.
(2) Effects on the promulgating administrative body: Described in "b" above.
(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: Described in 3(b).
(3) Assessment of anticipated effect on state and local revenues: This regulation does not effect any state or local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This proposed amendment is the result of many hours of work by a group of practicing veterinarians and KSRC staff.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no other statutes, regulations or policies which conflict, overlap, or duplicate.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not used in the old regulation: all racing horses were treated the same. The KSRC feels it is appropriate to continue this policy of one rule for all animals.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 4:050. Kentucky family planning program.

RELATES TO: KRS 211.180, 214.185
STATUTORY AUTHORITY: KRS 194.050(1), 211.090, 211.180
NECESSITY AND FUNCTION: P.L. 91-572, the "Family Planning Services and Population Research Act of 1970" and 42 CFR, Part 59, authorizes grants for family planning services. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the Kentucky Family Planning Program in accordance with applicable federal laws and regulations.

Section 1. State Plan for Family Planning Services. The Cabinet for Human Resources hereby adopts the "Kentucky State Plan for Family Planning Services - Fiscal Year 1988-1989," and the "Kentucky State Plan for Family Planning Services - Fiscal Year 1987-1988,"by reference as the Kentucky Family Planning regulation covering all phases of program operation including but not limited to program eligibility for services and provision for fee collections in accordance with federal regulations and guidelines, consent requirements, medical standards, quality assurance, and other relevant components of the program. A copy of the "Kentucky State Plan for Family Planning Services - Fiscal Year 1988-1989," and the "Kentucky State Plan for Family Planning Services - Fiscal Year 1987-88" has been filed with Region IV, Department of Health and Human Services, 101 Marietta Tower, Atlanta, GA 30323. A copy shall be on file and available for public

inspection in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, KY 40621.

C. HERNANDEZ, MD, MPH, Commissioner
HARRY J. COWHERD, MD, Secretary
APPROVED BY AGENCY: September 6, 1988
FILED WITH LRC: September 14, 1988 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation ha been scheduled for October 21, 1988, in the Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 16, 1988, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 175 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ann W. Tarter
(1) Type and number of entities affected: Twenty agencies receiving federal funds, 100,000 patients; 147 clinics including all local health departments and some private, nonprofit agencies.
(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings since this administrative regulation reflects the submission of an annual plan.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): Slight increase in sliding fee scale costs to patients as a result of revised DHHS poverty income guidelines.
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: Inflationary factors have increased cost per patient 5.4% over the previous year.
(b) Reporting and paperwork requirements: No additional paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: Services existing, no additional affect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Most efficient alternative.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No apparent conflict.
(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 proposed regulation applies to all independent county and district health departments and will not disproportionately affect any local health department. Local health policies must be uniform for all county and district health departments under KRS Chapter 212.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title X of P.L. 91-572 - "Population Research and Voluntary Family Planning Program."
2. State compliance standards. State compliance standards are in accordance with minimum uniform standards contained in the federal mandate.
3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires certain medical, counseling, and contraceptive services in the provision of a voluntary family planning program.
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.

CABINET FOR HUMAN RESOURCES
Office of the Inspector General
(Proposed Amendment)

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

RELATES TO: KRS 216B.010 to 216B.130, 216B.107, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 216B.040, 216B.105[, Executive Order 86-366]
NECESSITY AND FUNCTION: KRS 216B.040 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. [Executive Order 86-366 transferred the authority to regulate health services and health facilities from the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to the Office of the Inspector General.] This regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

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

Section 2. Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.
(2) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training.
(3) "Registered records administrator" means a person who is certified as a Registered Records Administrator by the American Medical Record

Association.

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

(5) "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

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

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

(8) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

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

(10) "Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.

(11) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

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

(13) "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs/tissues for transplantation.

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

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

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

(2) Administrator.

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

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

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

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

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

(3) Administrative records and reports.

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

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

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

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

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

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

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

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

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

(g) There shall be an effective procedure for recording accidents involving a patient,

visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

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

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

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

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

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

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

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

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

(7) Transfer procedures and agreements.

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

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

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

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

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

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

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

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

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

5. Establish requirements regarding the frequency of, and attendance at, general staff and department/service meeting of the medical staff.

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

(9) Personnel.

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

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

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

1. The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of

prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

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

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

5. Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

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

1. Name, address, Social Security number;

2. Health records;

3. Evidence of current registration, certification, or licensure of personnel;

4. Records of training and experience;

5. Records of performance evaluation.

(10) Physical and sanitary environment.

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

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

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

(d) There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines [There shall be current written infection control measures,] including:

1. Policies which address the prevention of disease transmission to and from patients; visitors and employees, including but not limited to; [Policies concerning the admission and isolation of patients with specific or suspected infectious diseases, protective isolation of appropriate patients and protective routine for personnel and visitors;]

a. Universal blood and body fluid precautions;

b. Precautions for infections which can be transmitted by the air-borne route; and

c. Work restrictions for employees with infectious diseases.

2. Policies which address the use of environmental cultures. Results of all testing shall be recorded and reported to the Infection Control Committee; and [Written procedures for the bacteriological testing of all areas of possible infection. Results of all testing shall be recorded and reported to the infection control committee;]

3. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment. [The method of control used in relation to the sterilization of supplies and water; and]

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

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

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

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

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

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

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

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

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

(g)1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use. [Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid containers immediately after use. After use, all needles shall also be rendered unusable. The rigid containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020.]

2. Needles shall not be recapped, purposely bent or broken, or otherwise manipulated by hand.

3. The containers of sharp wastes shall either be incinerated on or off site, or be placed in a sanitary landfill only after processing which both autoclaves and compacts the containers.

4. Nondisposable sharps such as large-bore needles or scissors shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department in accordance with 902 KAR 20:009, Section 22.

(h)1. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of all wastes.

3. The following wastes shall be incinerated or autoclaved before disposal:

a. Microbiology laboratory waste which includes, but is not limited to viral or bacterial cultures, contaminated swabs, and specimen containers and test tubes used for microbiologic purposes; and

b. Pathological waste which includes, all tissue specimens from surgical or necropsy procedures.

4. The following wastes shall be disposed of by incineration or, be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

5. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

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

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

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose. Uncovered mobile carts may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and will be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in areas separate from clean linen. [The hospital shall establish a written policy for the handling and disposal of all infectious and pathological waste. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.]

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

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

[a. Dressings and materials from open or contaminated wounds;]

[b. Waste materials and disposable linens from isolation rooms;]

[c. Culture plates;]

[d. Test tubes;]

[e. Sputum cups; and]

[f. Contaminated sponges and swabs.]

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

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

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

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

(11) Medical records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location(s) for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to

inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission and name of attending medical staff member;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member; and, if given verbally, undersigned by the medical staff member upon his next visit to hospital;

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthetist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Physician's, or dentist's when applicable, progress notes and nurses' observations;

11. Record of temperature, blood pressure, pulse and respiration;

12. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, as is applicable;

13. Discharge summary, including condition of patient on discharge, and date of discharge;

14. In case of death, autopsy findings, if performed; and

15. In the case of death, an indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written organ procurement for transplant protocol, in consultation with an organ procurement agency, which encourages organ donation and identifies potential organ donors.

(b) In cases where an individual has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ/tissue donor.

(c) The hospital protocol shall include:

1. Criteria, developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or his designee to notify the organ procurement agency of potential organ donors;

4. Procedures by which the patient's attending physician or designee in accordance with hospital protocol shall document in the patient's medical record that the organ procurement agency has been notified in the case of potential donors or contraindications to donation.

(d) No patient with impending or declared brain death and/or cardiopulmonary death as determined pursuant to KRS 446.400 should be considered as a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his/her patient. A physician, or other member of the medical staff if so designated in the hospital bylaws, shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.

(c) The attending medical staff member shall state his final diagnosis, complete the discharge summary and sign the records within fifteen (15) days following the patient's discharge.

(d) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(e) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of

science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing care plans, and nursing care procedures.

1. Nursing care plans shall be developed for each patient and shall be kept current daily. Plans shall indicate long and short-term goals, nursing care needed, and methods, approaches and modifications necessary to insure best results for the patient.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physician, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. No medication or treatment shall be given without a written order signed by a physician or dentist, when applicable. Telephone orders for medications shall be given only to registered nurses or a pharmacist and signed by the medical staff member within twenty-four (24) hours from the time the order is given.

6. No form of patient restraint or protective device other than bed rails shall be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietician or nutritionist, either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and

blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. Laboratory services shall be under the direction of a pathologist on a full-time, regular part-time, or a consultative basis. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by a medical staff member.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their in-service training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgery shall be macroscopically, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the minimum proficiency testing and quality control provisions in accordance with Medicare certification requirements.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and disposition of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for further testing in the event of reactions. Blood not so retained which has exceeded its expiration date

shall be disposed of promptly.

9. The review committee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the physician's, or dentist's when applicable, original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications/prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of a physician or dentist, and the order shall contain a concise statement of the reason for the service/examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration/rehabilitation service.

(a) Hospitals in which physical restoration/rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for physical therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Physical therapy services shall be provided only upon written orders of a medical staff member.

(f) Physical therapy services shall be provided by or under the supervision of a licensed physical therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department/service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person(s) transporting patient, and time of arrival;

b. History of present complaint and physical findings;

c. Laboratory and x-ray reports, where applicable;

d. Diagnosis;

e. Treatment ordered and details of treatment provided;

f. Patient disposition;

g. Record of all referrals;

h. Instructions to the patient and/or family for those not admitted to the hospital; and

i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, ar other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room(s) and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies

of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical workup in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a preanesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a postanesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The postanesthetic follow-up note shall be written upon discharge from the post-anesthesia recovery area or within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery [before the infant is removed from the delivery room].

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area

permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 8, 1988

FILED WITH LRC: September 14, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1988 at 9 a.m. in the Health Services Auditorium, First 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 October 16, 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 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander

(1) Type and number of entities affected: 125 hospitals.

(a) Direct and indirect costs or savings to those affected: The costs associated with these amendments will vary depending on the size of the facility and the type of waste management procedures already in place. Industry estimates range anywhere from 2 to 5 pounds of infectious waste per day per bed and costs of disposal anywhere between 20 and 50 cents per pound.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): Hospitals may incur extra costs if they have to redraft waste management policies.

(b) Reporting and paperwork requirements: On balance, there will be no additional requirements: a post-anesthesia note has been modified to allow for more flexibility, blood pressure has been added as a required element of the patient record.

(2) Effects on the promulgating administrative body: There will be a change in survey procedures, should not have any significant effect.

(a) Direct and indirect costs or savings: The costs associated with printing new survey form and regulations.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs as reprints of regulations and survey forms are built into the continuing budget.

3. Additional factors increasing or decreasing costs: The change in the linen requirements may reduce some unnecessary citations thereby reducing agency costs.

(b) Reporting and paperwork requirements: No additional requirements are anticipated.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: An infection control and waste management committee composed of professionals in the field and representatives at the state felt this was the best option.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There should be no conflict with existing statutes.

(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. In order to insure the health and safety of hospital workers and citizens of the Commonwealth, these standards should apply to all hospital facilities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. CFR 482.2-482.60.

2. State compliance standards. This regulation is being amended to update the standards relating to infection control and waste management, to clarify linen policies, to add patient blood pressure to the required elements of the patient record, and to make prophilaxis for the prevention of infant blindness time specific.

3. Minimum or uniform standards contained in the federal mandate. Federal standards are general in nature, so that specific standards as they relate to these areas do not exist.

4. Will this administrative regulation impose

stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state standards are more detailed than the federal standards. They do not impose any different responsibilities on the hospital.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The greater detail in the state standards is necessary in order to assure quality care in Kentucky.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: KRS 194.050

STATUTORY AUTHORITY: KRS 194.050, 7 CFR Part 270 through 280

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the procedures used by the cabinet to determine when an act of intentional program violation has occurred and appropriate penalties which shall be applied.

Section 1. Administrative Disqualification Hearings. An administrative disqualification hearing shall [should] be initiated by the cabinet whenever it has documented evidence to prove that a household member has committed an act of intentional program violation. An administrative disqualification hearing may be initiated regardless of the current eligibility of the individual. For purposes of determining if an act of intentional program violation, as defined in 7 CFR 273.16(c), has been committed, the [said] act shall consist of having intentionally:

(1) Made a false or misleading statement, or misrepresented, concealed, or withheld facts; or

(2) Committed any act that constitutes a violation of the Food Stamp Act, the food stamp regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP's.

Section 2. Disqualification Hearing Procedures. The cabinet shall [will] provide state level administrative disqualification hearings in accordance with 7 CFR 273.16(e) which shall [will] be heard by the fair hearing officials. Hearings shall be conducted by an impartial official(s) who did not have any personal stake or involvement in the case, who was not directly involved in the initial determination that the household member had committed intentional program violation, and was not the immediate supervisor of the case worker who took the action.

(1) The powers and duties of the hearing official shall be the same as those specified in 904 KAR 3:070, Section 12.

(2) The household's rights during the hearing shall be the same as those specified in 904 KAR 3:070, Section 13.

(3) The hearing decision shall comply with provisions specified in 904 KAR 3:070, Section 14(1).

(4) At the hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(5) Within ninety (90) days of the date the household member is notified in writing that a hearing has been scheduled, the cabinet shall conduct the hearing, arrive at a decision and notify the household member of the decision. The household member or representative is entitled to one (1) postponement not to exceed thirty (30) days, provided that the request is made at least ten (10) days in advance of the date of the scheduled hearing. If a hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

Section 3. Advance Notice of Disqualification Hearing. The cabinet shall provide written notice to the household member suspected of intentional program violation at least thirty (30) days in advance of the date a hearing initiated by the cabinet has been scheduled. The notice shall be sent certified mail - addressee only - return receipt requested and shall contain:

(1) The date, time, and place of the hearing;

(2) The charge(s) against the household member;

(3) A summary of the evidence, and how and where the evidence may [can] be examined;

(4) A warning that the decision shall [will] be based solely on information provided by the Food Stamp Office if the household member fails to appear at the hearing;

(5) A statement that the household member or representative shall [will] have ten (10) days from the date of the scheduled hearing to present good cause for failure to appear;

(6) A warning that a determination of intentional program violation shall [will] result in a six (6) month disqualification for the first violation, a twelve (12) month disqualification for a second violation, and permanent disqualification for the third violation, and a statement of which penalty is applicable to the case scheduled for a hearing;

(7) A listing of the household member's rights as contained in 904 KAR 3:070, Section 13;

(8) A statement that the hearing shall [does] not preclude the state or federal government from prosecuting the household member for intentional program violation in a civil or criminal court action, or from collecting the overissuance;

(9) A statement advising a household member, if there are individuals or organizations which provide free legal representation, of the availability of this service.

Section 4. Scheduling the Disqualification Hearing. The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation. If the household member or its representative does not appear for the hearing, the state agency shall determine whether proper advance notice was received by the household member. If there is no proof that the household member received or refused a

timely notice of the hearing, the hearing shall not be conducted and it shall be dismissed without prejudice. However, when the agency has sufficient evidence to verify that the household member either received or refused such notice, the hearing shall be conducted. [If the household member or its representative cannot be located or fails to appear at a hearing initiated by the cabinet without good cause, the hearing shall be conducted without the household member being represented.] Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional program violation was committed based on clear and convincing evidence. If the household member is found to have committed an intentional program violation but a hearing official later determined that the household member or representative had good cause as defined in 904 KAR 3:070, Section 9, for not appearing, the previous decision shall no longer remain valid and the cabinet shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. The household member shall have [has] ten (10) days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

Section 5. Participation while Awaiting a Disqualification Hearing. A pending hearing shall not affect the individual's or the household's right to be certified and participate in the program. Since the cabinet cannot disqualify a household member for intentional program violation until the hearing official or a court of appropriate jurisdiction finds that the individual has committed intentional program violation or the individual has signed a waiver of right to an administrative disqualification hearing, or the individual has signed a disqualification consent agreement, the cabinet shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household.

Section 6. Disqualification Hearing Decision. The hearing official shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed and intended to commit intentional program violation as defined in Section 1 of this regulation. Decisions of the hearing official shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent handbook section and corresponding FNS regulation and respond to reasoned arguments made by the household member or representative. An official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the hearing proceeding, shall be retained by the cabinet. This record shall also be available to the household or its representative during work hours for copying and inspection.

Section 7. Notification of Disqualification Hearing Decisions. The cabinet shall notify the household member in writing of hearing decisions as specified below:

(1) If the hearing finds that the household member did not commit intentional program violation, the cabinet shall provide a written notice which informs the household member of the decision.

(2) If the hearing finds that the household member committed intentional program violation, the cabinet shall provide written notice to the household member. This notice shall be provided prior to disqualification. The notice shall inform the household member of the disqualification and when the disqualification will take effect. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for program benefits. A list of the household member's rights shall also be printed on the notice of the hearing decision. A notice shall also be provided to the remaining household members, if any, informing them of the allotment they will receive during the disqualification period or that they may [must] reapply because their certification period has expired. A written demand letter shall also be sent to the remaining household members explaining the repayment requirements.

Section 8. Waiver Disqualification Hearings. Individuals accused of intentional program violation shall be allowed to waive their rights to an administrative disqualification hearing and shall be handled in accordance with 7 CFR 273.16(f).

Section 9. Deferred Adjudication. Individuals accused of intentional program violation shall be allowed to sign disqualification consent agreements in cases of deferred adjudication and shall be handled in accordance with 7 CFR 273.16(h).

Section 10. Intentional Program Violation Disqualification Penalties. Individuals found through an administrative disqualification hearing to have committed an intentional program violation, or individuals who have signed a waiver of right to an administrative disqualification hearing, or individuals who have signed a disqualification consent agreement, or individuals found guilty by a court of appropriate jurisdiction shall be ineligible to participate for six (6) months for the first violation, twelve (12) months for the second violation, or permanently for the third violation. The disqualification period for a nonparticipant shall be deferred until such time as he[/she] applies for and is determined eligible for program benefits. Once a disqualification period is imposed, it shall continue uninterrupted, regardless of any subsequent determinations of eligibility/ineligibility of the disqualified member's household. Court ordered disqualifications may be imposed separate and apart from any action taken by the cabinet. In cases where the determination of intentional program violation is reversed by a court, the cabinet shall reinstate the individual, if eligible, and restore any benefits that were lost as a result of the disqualification. Individuals found guilty of intentional program violation by a court of appropriate jurisdiction shall be disqualified for the period of time specified by that court. If the court fails to

specify or address a disqualification period for the intentional program violation, the cabinet shall impose a disqualification period consistent with the time periods set forth in this section and in accordance with 7 CFR 273.16(g)(2). The cabinet shall disqualify only the individual convicted of intentional program violation and not the entire household. The remaining household members shall agree to make restitution within thirty (30) days of the date the cabinet's demand letter is mailed, in accordance with established procedures for cash or coupon repayment. If the household does not agree to make restitution or after having agreed to make restitution fails to do so, allotment reduction shall be imposed on the household's monthly allotment. The cabinet shall inform the household in writing of the disqualification penalties for committing intentional program violation at each time it applies for benefits.

Section 11. Appeal Rights of the Household. No further administrative appeal procedure exists after an administrative disqualification hearing finds that an intentional program violation was committed or an individual has waived his[/her] right to an administrative disqualification hearing. The determination of intentional program violation made by a disqualification hearing official shall not [cannot] be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

Section 12. The provisions contained in this regulation shall become effective, in accordance with 272.1(g), September 1, 1988 [April 1, 1983].

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 26, 1988
FILED WITH LRC: August 30, 1988 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by October 16, 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 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: Approximately 0.5% of food stamp recipients are disqualified for Intentional Program Violation. Of these, about 25% do not appear for the scheduled hearing. In instances, when the client did not receive the appointment letter, the claim will be dismissed until the client reapplies for benefits. Collection proceedings will not be initiated until the hearing is conducted.
2. Continuing costs or savings: Same as for the first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: The claim is "dismissed without prejudice;" thus, a second hearing may be 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: Minimal administrative costs associated with scheduling additional hearings will be incurred.
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Eligibility conditions for food stamps and disqualification procedures must be applied on a consistent and equitable basis throughout the state in accordance with federal regulations at 7 CFR 273.16(e)(2).

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:013. Payments for hospital inpatient services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: 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 are required to [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 September [April] 1, 1988, which is incorporated [herein] by reference in this regulation. 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 or, effective with regard to services provided on or after September 1, 1988, twenty-five (25) percent or more nursery days resulting from Medicaid deliveries as compared to the total number of paid Medicaid days) 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 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.

(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 to this regulation [shown herein] shall be effective with regard to payments for services rendered July [April] 1, 1988, and thereafter except as specified in Sections 2 and 4(8) of this regulation.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 22, 1988
FILED WITH LRC: August 30, 1988 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 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 October 16, 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 out-of-state Medicaid 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: $1.3 million savings from reduced payments to providers.

2. Continuing costs or savings: $1.5 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 1:036. Amounts payable for skilled nursing and intermediate care facility services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: 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. Definitions. For purpose of Sections 2 through 6 of this regulation, the following definitions shall prevail unless the specific context dictates otherwise:

(1) "Alllowable 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.

(f) Respiratory therapy (excluding the routine administration of oxygen) effective September 1, 1988.

(g) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only).

(h) Ventilator therapy services, subject to the coverage limitations shown in the reimbursement manual.

(i) 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, band-aids 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.

Section 2. [1.] Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing facilities (SNFs) or intermediate care facilities (ICFs) 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 3. [2.] Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which are required to [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, which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles. The Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 4. [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 except as specified in this section, including the provisions contained in subsections (14) and (15) of this section. 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 shall [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 135 percent of the upper limit [102 percent of the median of allowable trended and indexed costs] of all other SNFs for covered services provided on or after July 1, 1988, and at 125 percent of the upper limit of all other SNFs for covered services provided on or after January 1, 1989, and at 115 percent of the upper limit of all other SNFs for covered services provided on or after October 1, 1989, and at 105 percent of the upper limit of all other SNFs for covered services provided on or after July 1, 1990 [, 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 (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Interimediate Care/Skilled Nursing Facility 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 shall [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 Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility 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 <u>any</u> [such] records (in a form acceptable to the cabinet) <u>which</u> [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.

<u>(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts, effective September 1, 1988.</u>

(16) Reimbursement paid <u>shall</u> [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 shall [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 is required to [must] be in the skilled nursing facility bed awaiting placement to an intermediate care bed; and

(c) The patient is required to [must] have been reclassified from SNF patient status to ICF patient status; or, alternatively, the patient is required to [must] meet ICF patient status criteria, and the appropriate representative of the Department for Social Services is required to [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 5. [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 $75.69 effective July 1, 1988 and $70.09 effective January 1, 1989 [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 are required to [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 6. [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 is required to [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 is required to [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 are required to [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.]

[(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) 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 with regard to payments for services provided on or after July [May] 1, 1988 except as specified in Sections 1(2)(f), 4(2) and (15)(d) of this regulation.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 22, 1988
FILED WITH LRC: August 30, 1988 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 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 October 16, 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: $230,000 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: The difference is due to first year phase-in and the fact the decrease in the upper limit for hospital based SNFs is being done in increments.
(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 methods 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.

PROPOSED REGULATIONS RECEIVED THROUGH SEPTEMBER 15

DEPARTMENT OF MILITARY AFFAIRS

106 KAR 1:060. Rescue squad regulations.

RELATES TO: KRS Chapter 39
STATUTORY AUTHORITY: KRS 39.730
NECESSITY AND FUNCTION: KRS 39.730 requires the Division of Disaster and Emergency Services to develop regulations identifying minimum equipment to be obtained by rescue squads which participate in the rescue aid program. Further, KRS 39.700-39.770 provides information about eligibility, rescue operations and funding procedures and additional information is required to assist squads and to ensure uniformity and fairness in the administration of the program.

Section 1. KRS 39.730 sets forth eligibility requirements for rescue squads applying for grants. All requirements shall apply to applicants for the first grant and subsequent grants under this statute except that squads shall not be required to meet the 168 man-hour training requirement until July 1, 1989.

Section 2. KRS 39.730 requires rescue squads to be formally affiliated with the local disaster and emergency services organization. In those cases where the local disaster and emergency services organization does not meet minimum requirements established for participation in the state supplementary fund program, whether the organization actually receives funds or not, it shall be determined that the local organization is inactive and that affiliation is impossible.

Section 3. KRS 39.720 requires each local disaster and emergency services director to submit requests for funding initiated by the chief officer of each rescue squad. In counties with more than one (1) squad applying for funds, the director shall, after consulting with squad representatives and the county judge/executive, submit with the application a memorandum or letter enumerating comprehensive priorities for the jurisdiction.

Section 4. Each rescue squad which applies for rescue aid funds shall use DES Form 107, which shall be provided by the state Division of Disaster and Emergency Services. All sections of the form shall be properly completed before the advisory committee established under KRS 39.720 may consider the application. The committee may require additional information when such information may aid in the review process.

Section 5. The executive director of disaster and emergency services shall approve grants for equipment specified as basic minimum equipment for each qualifying squad before approving funds for any other equipment unless, in his judgment,

justification for such optional equipment is so extraordinary that it merits an exemption from the requirement. All such exemptions shall be made in writing.

Section 6. The executive director of disaster and emergency services may recognize squads which provide one (1) or more "specialized" rescue services. He may do so only after determining that there is a need for such services and that the need is not being met by existing resources. Any local disaster and emergency services director, rescue squad member, or individual interested in establishing a specialized squad may propose that a service be recognized and may subsequently negotiate a basic minimum equipment list for that specialty.

Section 7. The basic minimum equipment list for general purpose rescue squads shall be:

12 pair gloves
12 pair goggles
12 fire or squad coats
2 self-contained breathing apparatus (OSHA approved)
2 first aid kits
2 full backboards
2 half backboards
1 stokes basket
2 1/2" x 12" gooseneck wrecking bar
2 1" x 30" gooseneck wrecking bar
1 6' pry bar
1 12' tow chain
2 hacksaw frames
12 hacksaw blades
1 10-ton porta-power
1 8' straight ladder
2 pair pliers
2 pair wire cutters with insulated grips
1 18" bow saw
1 set of common screwdrivers
1 set of Phillips screwdrivers
1 pair tin snips
1 round point shovel, short handle
2 fire retardant blankets or salvage covers
2 150' sections of rope
2 4" tackle blocks
12 helmets
12 pair boots with protective toe
1 oxygen bottle with regulator
1 resuscitator
1 splint kit
1 set of webbing for casualty handling
1 combination pick and flat head axe
2 crash axe
2 crescent wrenches
2 pipe wrenches
1 14" chain saw
1 claw hammer
1 8 lb. sledge hammer
1 5-ton hydraulic jack
1 1.5-ton "come along"
1 air chisel with extra tank
2 hay bale hooks
1 seat belt cutter
1 center punch
1 pair vice grips
1 round point shovel, long handle
1 mattock
4 50' sections of rope
1 5 gal. gas can, safety type
2 10 lb. fire extinguishers, ABC rated
1 2.5 KVA portable generator
1 100' No. 10 electrical extension cord
2 100' No. 12 electrical extension cord
4 portable radios
* mobile radios (1 per vehicle)
1 50' No. 10 electrical extension cord
2 portable flood lights
12 pagers
1 pager encoder
1 radio base station

Section 8. Squads specializing in water rescue and recovery shall have the following equipment before becoming eligible for grants:

1 vehicle dedicated to water rescue and recovery
1 16' john boat (equivalent or larger)
2 oars
1 trailer
1 boat motor (15 HP minimum)

Section 9. The basic minimum equipment for squads specializing in water rescue and recovery shall be:

4 type III personal flotation devices (USCG approved)
1 boat motor (25 HP)
2 pike poles
1 shepherd's hook
1 20' john boat
2 lanterns with rechargeable batteries
2 rescue pulleys (Anderson or equivalent)
1 body bag
2 pair of waders
1 stokes basket stretcher or equivalent
1 pair vice grips
1 Phillips head screwdriver
1 hatchet
1 pair bolt cutters
2 signal lights
4 buoy markers
2 gas tanks
2 grappling irons
1 grapnel
1 boat anchor
1 chart graph with print-out capability
2 spot lights
2 250' line bags
2 250' sections of drag line
4 pair rubberized gloves
1 full-length backboard
1 first aid kit
1 tool box
1 flat blade screwdriver
1 pair channel locks
1 bow saw
2 flashlights

Section 10. Squads specializing in high angle or cave rescue shall have the minimum following equipment before becoming eligible for grant funds:

1 vehicle dedicated to high angle or cave rescue
1 stokes basket stretcher or equivalent
1 200' of 7/16" static kermantle rope
4 large "D" locking carabiners
1 figure eight descender
4 6' x 1" nylon webbing

Section 11. The basic minimum equipment for squads specializing in high angle or cave rescue shall be:

10 large "D" locking carabiners
10 large "D" offset locking carabiners

4 Gibbs ascenders, or equivalent
6 200' 1/2" hauling rope
12 6' x 1/2" nylon webbing
4 2" rescue pulleys
4 pair rappelling gloves
1 KED stretcher or equivalent
2 RSI or equivalent rescue rack
1 fracture pack with assorted splints
4 figure eight descenders
4 rope bags
4 rappelling helmets
6 200' 7/16" static kermantle rope
4 rappelling Swiss seats or full-body harnesses
4 helmet head lamps
12 light sticks, Cyalume or equivalent
2 belt pack first aid kits
4 flashlights, with rechargeable batteries

Section 12. Unless specifically exempted, in writing, by the executive director, all equipment purchased in whole or in part with rescue aid funds shall be stored on a dedicated rescue vehicle or in a storage area controlled by the squad.

MICHAEL W. DAVIDSON, Brig. Gen.
APPROVED BY AGENCY: September 12, 1988
FILED WITH LRC: September 13, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1988 at 10 a.m. in the Emergency Operations Building, Boone National Guard Center, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 16, 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: David Adkinson, Disaster and Emergency Services, Boone Center, Frankfort, Kentucky 40601, 502-564-8629.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dave Adkinson
(1) Type and number of entities affected: Currently there are 219 rescue squads that availed themselves of the rescue aid grant program. The legislature appropriates funds annually that the Department of Military Affairs, Division of Disaster and Emergency Services allocates to those squads.
(a) Direct and indirect costs or savings to those affected: The only direct cost of the rescue squad is for administration time in completing the application and postage for mailings.
1. First year: None anticipated. However, the rescue squads may purchase high priced rescue gear with state rescue allocation.
2. Continuing costs or savings: Administrative time for application completions and postage.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None foreseen at this time.
(b) Reporting and paperwork requirements: All rescue squads who apply for funds are required to utilize departmental forms for financial accountability; other forms relate to the number of rescue missions and monthly training. The rescue mission forms and the monthly training reports are due quarterly.
(2) Effects on the promulgating administrative body: The recently enacted statutes give authority to the department to appoint a rescue review board to review all rescue applications and make recommendations to the executive director. This will reduce the amount of time spent on each application and permit the board to recommend an equitable decision for each application.
(a) Direct and indirect costs or savings: Staff time for application review will be significantly reduced as well as the award notification process.
1. First year: Significant reduction in the number and types of forms to track rescue squad expenditures.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs: None foreseen at this time.
(b) Reporting and paperwork requirements: See (2)(a).
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The process established for this program lends itself to the most equitable method of awards being given when compared to the number of squads competing for funds annually.
(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: Does not apply.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

TOURISM CABINET
Department for Fish & Wildlife Resources

301 KAR 1:146. Commercial fishing gear.

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: It is necessary to accurately describe the gear allowed in commercial fishing so that the proper size and species of fish can be harvested, the sport fish populations are not adversely affected and perpetuation of the fishery resource is assured.

Section 1. The functions of the various commercial fishing tags authorized under KRS 150.175 are consolidated into one (1) tag called "commercial gear tag" which shall serve as they each were designated in KRS 150.175, subsections (5), (6), (7) and (8).

Section 2. All lines and mesh shall be made of linen, cotton or flexible synthetic fiber only. All mesh shall be measured by bar measure. This

measure is the length of one (1) side of the square, or as measured between two (2) knots on the same line.

Section 3. The following gear is the only commercial gear that shall be used in commercial waters designated in 301 KAR 1:150 and under conditions described in 301 KAR 1:155 by appropriately licensed commercial fishermen:

(1) Hoop net, wing net, straight lead net, heart lead net.

(a) Shall have a minimum mesh size of three (3) inches, except in the lower Ohio River below McAlpine Locks and Dam, the Mississippi River, those portions of the Cumberland River below Barkley Dam and the Tennessee River below Kentucky Dam that are open to commercial fishing where the minimum mesh size shall be one (1) inch.

(b) Hoops may be any size or shape or material.

(c) Maximum length of each lead or wing shall be sixty (60) feet.

(d) Wings and leads must be constructed of multifilament natural or synthetic material only.

(e) Netting used for wings and leads shall be constructed of twine no smaller than number six (#6) nylon or equivalent, having a breaking strength of fifty-five (55) pounds or greater.

(f) Wings and leads may be of knotted or knotless construction and shall have a mesh size no larger than one (1) inch.

(g) Hoop nets, wing nets, straight lead nets or heart lead nets shall be fished as individual nets. Wings or leads shall not be tied together so as to become continuous multiple net units.

(h) Wings and leads shall be used only to lead fish into the hoop net.

(i) One (1) commercial gear tag shall be attached to the first hoop of each net.

(2) Gill net or trammel net.

(a) May be used only in Ohio and Mississippi Rivers and overflow lakes directly connected with each river or as specified in 301 KAR 1:140. Minimum mesh size is three (3) inches in the Mississippi and its overflow lakes and four (4) inches in the Ohio River and its overflow lakes.

(b) May be fished weighted or as a flag net.

(c) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.

(3) Commercial trotline.

(a) Shall have more than fifty (50) hooks placed no closer than eighteen (18) inches apart.

(b) Shall have one (1) commercial gear tag attached.

(c) Shall be no longer than 3,000 feet, including staging, and shall be fished separately, not tied together in a continuous line.

(4) Seine.

(a) Shall have a maximum mesh size of one (1) inch and may be of knotted or knotless construction. Knotted netting shall be constructed of twine no smaller than number 6 (#6) nylon or equivalent having a breaking strength of fifty-five (55) pounds or greater, and knotless netting shall be constructed of twine no smaller than #147 nylon or equivalent having a breaking strength of fifty (50) pounds or greater.

(b) Shall be constructed of multifilament natural or synthetic material only.

(c) Shall have both float and lead lines.

(d) Shall have wood, fiberglass, or metal poles or brailes attached at each end.

(e) Shall be attended by persons pulling the siene by hand through the water for the entrapment of fish.

(f) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.

(5) Slat trap basket.

(a) Shall have no wire or other mesh added to any part of trap.

(b) Shall have at least two (2) openings left between slats no smaller than one and one-fourth (1 1/4) inches wide in the catch portion of the trap. These openings shall not be restricted by cross-bracings to a length shorter than eight (8) inches.

(c) Shall be no larger than two (2) feet in diameter or square-end measure.

(d) Shall have one (1) commercial gear tag attached to opening ring or square.

Section 4. 301 KAR 1:145, Gear allowed for commercial fishing, is hereby repealed.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman

APPROVED BY AGENCY: September 15, 1988
FILED WITH LRC: September 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on Wednesday, October 26, 1988 at 10 a.m. in the Meeting Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: There are 873 licensed commercial fishermen in Kentucky. Presently 110 of those fishermen are fishing the upper portion of the Ohio River above McAlpine locks and dam.

(a) Direct and indirect costs or savings to those affected: It is believed that 25% of the commercial fishermen will be required to replace their small mesh hoop nets with slat baskets. This will require the purchase of an average of 15 baskets per fisherman at $30 per basket for a cost of $450 per fisherman. Increased catch efficiency should however result in increased profits that will negate the initial investment within one fishing season.

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 is involved.

(2) Effects on the promulgating administrative body: No additional effort will be required. Policing will be a part of ongoing patrol. Some reduction in illegal netting is expected to occur since small mesh nets will not be legal to use anywhere in the eastern portion of the state.

(a) Direct and indirect costs or savings: Small decreases in costs will occur as a result of a decrease in illegal netting activities.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Slight decrease in citations and associated law enforcement reports.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on budgets, funding, manpower levels or equipment needs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Banning the use of small mesh hoop nets is the only approach that removes the threat to the sport fish population in the upper river.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or government policies which are 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: Prohibiting the use of small mesh (less than 3") hoop nets will not adversely affect the catch of fiddler (12"-15") channel catfish which is the target species. Slat baskets which are legal gear are specifically designed to harvest fiddlers and their catch efficiency is much higher.

TIERING: Was tiering applied? No. Commercial fishermen are the only entities regulated. There is no justification for tailored requirements. There is biological justification for tailored resource requirements and as such the allowable use, methods and gear vary from one body of water to another.

KENTUCKY PAROLE BOARD

501 KAR 1:030. Determining parole eligibility.

RELATES TO: KRS 439.340
STATUTORY AUTHORITY: KRS 439.340(3)
NECESSITY AND FUNCTION: KRS 439.340 requires the Kentucky Parole Board to adopt regulations with respect to eligibility of prisoners for parole. This regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. As used in these regulations, unless the content otherwise requires:

(1) "Board" is the Kentucky Parole Board or a quorum thereof.

(2) "Quorum" is the number of members of any body who must necessarily be present in order for the body to transact business.

(3) "Panel" is anything less than a quorum.

(4) "Chairman" is the chief administrative officer of the board as described in KRS 439.320(2), appointed by the Governor to direct the operations of the board and to fulfill the functions established by law for such position.

(5) "Detainer" is a document issued or made by a legal authority, authorizing the keeper of a prison/jail to keep in his custody the person named in the document.

(6) "Serve-out" is a decision of the board that an inmate must serve until the completion of his sentence (SOT - serve-out time).

(7) "Deferment" is a decision of the board that an inmate must serve a specific number of months before further parole consideration.

(8) "Reconsideration" is a decision to review a previous board action.

(9) "Parole recommendation" is a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence if the inmate has an approved parole plan and if the inmate has signed his parole certificate.

(10) "Parole" is the release of an inmate with a signed parole certificate to the community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision. Where a court or other authority has issued a detainer against the inmate, the board, in its discretion, may release him to answer the detainer of such court or authority.

(11) "Parole rescission" is a decision of the board to terminate or rescind an inmate's parole recommendation, before such inmate is actually released on parole.

(12) "Parole revocation" is the formal procedure by which the board may terminate or revoke a parolee's release on parole.

(13) "Preliminary hearing" is the initial hearing conducted by an administrative law judge to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.

(14) "Youthful offender" is a juvenile declared as such as described in KRS 640.010.

Section 2. Statement of Content. (1) It is the intent of the Kentucky General Assembly in creating the Kentucky Parole Board that it be autonomous and in all respects functionally and administratively separate from any other state agency, except as provided in KRS 439.320(1). Consequently, the board will protect such necessary freedom from real or apparent political control, manipulation, or undue or improper influence by any person, group, or other entity of any kind.

(2) All decisions of the board regarding policy, procedures and its actions in parole matters shall be determined by simple majority vote of the members of the board, except as provided in KRS 439.320(2). Panels of the board may make recommendations to the full board where authorized.

Section 3. Administration. (1) Board structure. The composition of the board shall be as provided by law. The appointment of members of the board, the selection of its chairman, and the quorum requirements shall be those as specified by law.

(2) Information concerning the board.

(a) The board shall provide and disseminate written information concerning the functions of the Kentucky Parole Board.

(b) The board shall maintain close communication and cooperation with the Corrections Cabinet, the Governor and his staff, members and committees of the General Assembly, and other public officials, including judges, state attorney general, Commonwealth Attorney, law enforcement officials and public defenders. The board will communicate and cooperate with all public and private service agencies, including, but not limited to, agencies dealing with mental health, vocational rehabilitation, legal aid and human services.

(c) Since the board has the authority to grant parole, it welcomes the opinion of the sentencing judge, prosecuting attorney, other public officials, and private citizens concerning parole consideration.

Section 4. Parole Eligibility. (1) Initial parole review date.

(a) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed after the effective date of this regulation shall have their cases reviewed by the board (unless otherwise prohibited by statute) in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including Life	8 years
Persistent Felony Offender I	10 years

For the crimes, committed on or after July 15, 1986, of murder, manslaughter I, rape I, sodomy I, assault I, kidnapping (where there is serious physical injury or death), arson I (where there is serious physical injury or death), criminal attempt, criminal solicitation, or criminal conspiracy to commit any of the previously listed capital offenses or Class A felonies which involve serious physical injury or death of the victim:

Sentences of a Number of Years	As prescribed by statute
Sentences of Life	As prescribed by statute

(b) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed on or after December 3, 1980 but prior to the effective date of this regulation shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including Life	8 years

(c) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed prior to December 3, 1980 shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including Life	6 years

Parole eligibility on those individuals serving multiple sentences, one (1) or more of the crimes which resulted in the convictions committed under Section 4(b) or (c) of this regulation and one (1) or more committed under Section 4(a) of this regulation, will be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(d) After the initial review for parole, subsequent review, so long as confinement continues, shall be at the discretion of the board; except maximum deferment given at any one time shall not exceed the minimum parole eligibility for a life sentence as established by statute. The board reserves the right to order a serve-out on any sentence.

(e) A sentence on conviction of a felony imposed upon a confined prisoner for a crime committed prior to the date of his instant commitment, if designated to be served consecutively, shall be added to the sentence(s) being served to determine eligibility for parole consideration if the inmate has not been discharged from the institution since his original admission on that institutional number. If the confined prisoner is a returned parole violator with an additional consecutive sentence then parole eligibility will be determined on the length of the new sentence only, calculated from the date of final sentencing. If the confined prisoner has been recommended for parole or given a serve-out or deferment and receives an additional sentence, running either concurrently or consecutively, parole eligibility on the new sentence will be calculated from the date of original admission on the aggregate sentences (total time to serve) and allowing jail credit on all sentences, as if he had never been seen by the board. If the additional sentence is designated to be served concurrently, he shall be considered as having started to accrue parole eligibility on the day

he was committed on the first sentence.

(f) A person receiving a concurrent or consecutive sentence(s) for crime(s) committed while confined in the institution or while on escape from the institution shall not begin accruing eligibility time towards parole consideration on the latter sentence(s) until he has become eligible for parole on the sentence(s), including a life sentence, for which he was originally confined.

(g) In determining parole eligibility for an inmate who has received a sentence for an escape, the board will require, in addition to the amount of time to be served for parole eligibility on the original sentence(s), and the time required to be served for any crime(s) committed while in the institution or while on escape, the service of additional time equal to the time to be served for any additional sentence(s) received for such escape.

(h) If a confined prisoner receives a deferment, escapes before he meets the board next time, returns to the institution from escape but does not have a new sentence for escape, the time out on escape will be added to the deferred date to arrive at his new adjusted deferment date. However, if he later receives an escape sentence for that escape, his time will be calculated on the new sentence from the date of sentencing. A new escape sentence will wipe out the deferment.

(i) Even though an inmate has received a serve-out or deferment on his original sentence(s) prior to receiving an escape sentence or a sentence or sentences for crimes committed while on escape or while confined in the institution, he will automatically be brought before the board again when, and not until, he becomes eligible for parole consideration on the additional sentence(s) and the parole eligibility will be calculated from the date of sentencing on the new sentence or sentences.

(j) If an inmate has received a parole recommendation but escapes prior to being released on parole, the parole recommendation will be rescinded by the board upon receipt of an affidavit signed and submitted by the institutional parole officer of the institution from where the inmate escaped attesting to the fact that the escape has occurred. Upon return to a state institution, the inmate will be placed back before the board at its next regularly scheduled hearing at the institution where he is confined.

(k) A person who is shock probated and later returned as a shock probation violator shall be considered for parole after he has served the required time on the sentence calculated by adding on the period of time the inmate was out of the institution to his original parole eligibility date.

(l) Persons returned to the institution as a shock probation violator with a new concurrent sentence shall have separate dates of parole eligibility on each sentence computed and the inmate will be heard separately on each eligibility date. The adjusted parole eligibility date on the sentence on which he was shock probated shall be determined by adding the period of time he was out of the institution to his original parole eligibility date calculated prior to being shock probated.

(m) A person who is shock probated and later returned to the institution with a new sentence acquired while on shock probation and ordered to be served consecutively shall be eligible for a parole hearing when he has served the amount of time required to be eligible for a parole hearing required on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences.

(2) In keeping with the intent of the Act, the Parole Board may with the consent of the majority of the board review the case of any inmate for parole consideration prior to his eligibility date if he qualifies for the intensive supervision program under the criteria established in conjunction with the Corrections Cabinet, or medical problems exist, as documented by the Corrections Cabinet medical doctors, or upon written request of the sentencing judge or prosecuting attorney of record. This will not be done until the reason for such action is submitted to all members in writing, along with all supporting documents, and all members will note in writing as to their desire to grant a hearing. This will then be filed in the record of the inmate in question and made a permanent part of his file in the central office of the Corrections Cabinet.

(3) The parole hearing will consist of an interview with the inmate by the board, or a panel. In instances when the inmate is too ill to appear before the board, the board may, at its discretion, appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members. In this instance, as in all cases, a majority vote by a quorum is required before action is taken.

(4) If an inmate refuses to meet the board on his scheduled hearing date, a notarized statement must be presented to this effect. A person refusing to meet the board may petition the board for reconsideration if he changes his mind.

(5) Inmates who are psychologically unstable may be deferred in absentia until they are able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

(6) The board shall schedule the initial parole hearing as follows (unless otherwise prescribed by statute):

(a) For those institutions that have hearings scheduled once per month, the inmates will be seen during the month they are eligible for parole consideration, if administratively possible.

(b) For those institutions that have hearings scheduled bimonthly, the inmates will be seen during the month eligible or one (1) month prior to the month they are eligible for parole consideration, if administratively possible.

(c) In those instances where it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible for a parole hearing, the inmate will be seen at the next available board hearing conducted at the institution where the inmate is housed.

(7) In all cases where parole is recommended, it is conditional upon continued good institutional conduct through the actual release date. If an inmate with a parole recommendation receives an institutional write-up and/or good

time loss, the board is to be notified in writing of the institutional infraction so that the board may take further action as needed.

Section 5. Board Criteria for Granting or Denying Parole. (1) Before granting or denying parole, the board shall apply any or all of the following factors to each inmate:

(a) Current offense - seriousness, violence involved, firearm used;

(b) Prior record;

(c) Institutional adjustment and conduct - disciplinary reports, loss of good time, work and program involvement;

(d) Attitude toward authority - before incarceration, during incarceration;

(e) History of alcohol or drug involvement;

(f) History of prior probation, shock probation or parole violations;

(g) Education and job skills;

(h) Employment history;

(i) Emotional stability;

(j) Mental capacities;

(k) Terminal illness;

(l) History of deviant behavior;

(m) Official and community attitudes toward accepting inmate back in the county of conviction;

(n) Victim impact statements and/or victim impact hearings;

(o) Review of parole plan - housing, employment, need for community treatment and follow-up resources;

(p) Any other factors involved that would relate to the inmate's needs and the safety of the public.

(2) During this process, the board may rescind a parole recommendation or reconsider a parole denial.

Section 6. Youthful Offender. (1) Youthful offenders are subject to the jurisdiction of the Kentucky Parole Board as described in KRS 640.080.

(2) The Cabinet for Human Resources and/or the Corrections Cabinet shall provide the Parole Board with all necessary records to conduct a hearing as described in KRS 640.100.

(3) Youthful offenders shall be subject to all sections of the Kentucky Parole Board regulations as applicable.

(4) Youthful offenders housed by the Cabinet for Human Resources shall have a hearing at a site agreed upon by that cabinet and the Parole Board.

(5) All youthful offenders housed by the Corrections Cabinet shall have a hearing at a site determined by the Parole Board.

(6) Administrative law judges shall hold preliminary revocation hearings at facilities out of sight and sound of adult inmates.

(7) Final revocation hearings for youthful offenders shall be held at a site agreed upon by the Cabinet for Human Resources and the Kentucky Parole Board or the Central Office of the Parole Board.

(8) Special hearings for youthful offenders will be held in central office.

Section 7. Conditions of Parole. (1) The general conditions are as follows:

(a) The parolee shall report to his parole officer immediately upon arrival at his destination and submit in writing once a month, or more often if directed by the officer, a report on forms prescribed by the Division of Probation and Parole.

(b) The parolee shall permit his parole officer to visit his home and place of employment at any time.

(c) The parolee shall not indulge in the use of nonprescribed controlled substances.

(d) The parolee shall work regularly and support his legal dependents. When unemployed, he shall report this fact to his officer and make every attempt to obtain other employment.

(e) The parolee shall not associate with a convicted felon except for legitimate purposes, including but not limited to family, residential, occupational or treatment purposes.

(f) The parolee shall not visit with inmates of penal institutions without permission of his parole officer.

(g) The parolee shall not leave the state, district, residence or place of employment without written permission of his parole officer.

(h) The parolee shall not be permitted to purchase, own or have in his possession a firearm or other weapon. Purchase of a firearm by a person who has been convicted of a felony is a violation of federal law.

(i) The parolee shall not violate any law or city ordinance of this state or any other state or of the United States.

(j) The parolee shall not falsify any report to his parole officer including his monthly report.

(k) The parolee does not have the right to register for voting purposes and cannot hold office; should he register or reregister prior to restoration of civil rights, he will be in violation of the law which carries a maximum penalty of five (5) years in prison.

(l) The parolee shall comply with all rules and regulations prescribed by the Division of Probation and Parole and special instructions of his parole officer.

(m) The parolee shall pay a supervision fee unless expressly waived by the Parole Board.

(2) Special conditions of parole may be added in individual cases at the discretion of the Parole Board.

Section 8. Repeal of Previous Regulation. This section repeals 501 KAR 1:011.

JOHN C. RUNDA, Ph.D., Chairman

APPROVED BY AGENCY: September 9, 1988

FILED WITH LRC: September 12, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1988 at 1 p.m. in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John C. Runda, Ph.D.

(1) Type and number of entities affected: 7,000 inmates of the Corrections Cabinet.

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

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative

body:
(a) Direct and indirect costs or savings:
1. First year: None. All of the costs involved with the implementation of the regulation are included in the operational budget.
2. Continuing costs or savings: None. Same as (2)(a)1.
3. Additional factors increasing or decreasing costs: None. Same as (2)(a)1.
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

KENTUCKY PAROLE BOARD

501 KAR 1:040. Conducting parole revocation hearings.

RELATES TO: KRS 439.315, 439.330(1)(e), 439.341, 439.390, 439.430, 439.440
STATUTORY AUTHORITY: KRS 439.340(3)
NECESSITY AND FUNCTION: KRS 439.340(3) requires the Parole Board to establish regulations concerning parole revocation hearings. This regulation contains the procedures for the revocation of parole and the issuance of warrants by the board.

Section 1. Preliminary Revocation Hearings. Preliminary revocation hearings shall be conducted by an administrative law judge of the Parole Board who shall have control over the proceedings and the reception of evidence at such hearings. The hearings shall be conducted in accordance with applicable state and federal law and in accordance with these regulations.
(1) Charges of parole violation are initiated by a parole officer of the Corrections Cabinet by service of a notice of preliminary hearing which sets forth the alleged violations. This notice may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, provided a finding is made that the substantial rights of the parolee will not be prejudiced by the amendment. A continuance of the proceeding may be granted in the event of such amendment, if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of such objection.
(2) Pursuant to SCR 3.700 Sub. rule 3, in the absence of an attorney to represent the Corrections Cabinet, Division of Probation and Parole, before the board and the administrative law judge, any duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the board or its administrative law judge as representative of the Corrections Cabinet in matters relating to the revocation of probation or parole.
(3) No hearing shall be conducted within ten (10) days of the service of the notice of preliminary hearing. The parolee may however, waive this waiting period. The preliminary hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.
(4) All preliminary revocation hearings shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including but not limited to electronically, mechanically or stenographically. However, the record of the proceedings need not be transcribed, unless so requested by the Parole Board.
(5) The administrative law judges may take judicial notice of acts of the Parole Board, including, but not limited to the conditions of parole, and all other matter which may be judicially noticed in the courts of this Commonwealth. Witnesses appearing at the preliminary hearing to give testimony must do so under oath, administered by the administrative law judge, and will be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. The parole officer shall bear the burden of proof in establishing the elements of the violation, except for those elements which are in the nature of affirmative defenses. The parole officer shall present evidence first and the parolee shall be given the opportunity to present evidence in defense or mitigation. Any further proceedings will be conducted at the discretion of the administrative law judge. The parolee may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, however, such evidence will be subject to rebuttal by the parole officer.
(6) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the parolee has committed any or all of the violations alleged in the notice of preliminary hearing. If probable cause is found to exist, the case shall then be referred to the Parole Board for their decision on whether a parole violation warrant should be issued, except that, upon agreement by all parties, leniency may be granted in any form deemed appropriate by the administrative law judge and upon agreement by the parolee to any additional conditions of his parole as set forth by the administrative law judge after consultation with the parole officer.
(7) In cases where the administrative law judge finds probable cause to believe that a violation of parole has been committed and the case is referred to the board for their decision on the issuance of a parole violation warrant, the administrative law judge may issue a recommendation, along with reasons in support of that recommendation, as to whether the warrant should be issued and the parolee returned for further proceedings. This recommendation shall be advisory only and shall not be binding on the board.
(8) In preliminary revocation hearings

conducted on probation cases or on cases in which the releasing authority is other than the Kentucky Parole Board, upon a finding of probable cause, the matter may be referred to the releasing authority for further revocation consideration, or leniency may be considered on the same basis as a case in which the Kentucky Parole Board is the releasing authority.

(9) In those cases in which the alleged violation of parole, as set forth in the notice of preliminary hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, no cases will be referred to the board for parole revocation consideration unless it is shown that the parolee has received a conviction in a court of law or there exists some other form of judicial admission, such as a plea of guilty, concerning the alleged criminal conduct, or it is found that the criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky. Nothing in this section shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.

(10) Any party appearing before an administrative law judge of the Kentucky Parole Board may be represented by counsel if he so desires, and may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel. Except however, chronic appearance for hearing without counsel by a parolee who is capable of retaining counsel, may be deemed an implicit waiver of counsel.

(11) The administrative law judges, in the absence of any specific statutory authorization, are prohibited from considering matters of bail or any other form of release from custody for those persons accused of parole or probation violations.

(12) If a parolee allegedly has emotional problems, a written report must be received as to the emotional stability or state of the parolee prior to the preliminary revocation hearing.

Section 2. Good Cause Hearings. KRS 439.315 requires the imposition of a supervision fee on all parolees and the establishment of a good cause hearing in the event the supervision fee is not paid. This section describes the good cause hearing.

(1) Upon nonpayment of any installment of the monthly supervision fee, the parole officer shall serve a notice of preliminary hearing on the parolee and also shall serve the supplemental notice of good cause hearing on the parolee.

(2) The good cause hearing shall be scheduled as any other preliminary revocation hearing.

(3) If the parolee makes the required supervision fee payment prior to the scheduled good cause hearing, the hearing shall be cancelled.

(4) The parolee shall be permitted legal representation at the good cause hearing.

(5) The burden of proof to show good cause for nonpayment of the supervision fee shall be placed upon the parolee.

(6) The administrative law judge of the Kentucky Parole Board shall determine whether good cause exists for the nonpayment of the supervision fee.

(7) If the administrative law judge finds that good cause exists for the nonpayment of the supervision fee, the charges shall be dismissed and the parolee shall be returned to parole supervision with the previously imposed supervision fee.

(8) If the administrative law judge finds that good cause does not exist, the parole officer may request that the hearing be continued sine die with the condition that the parolee pay the arrears and agrees to pay the supervision fee on a monthly basis.

(9) If the administrative law judge finds that good cause does not exist for nonpayment of the supervision fee, absent any motion from the parole officer, the hearing shall immediately continue and become a preliminary parole revocation hearing, and shall be conducted as described in Section 1 of this regulation.

Section 3. Parole Violation Warrants. Upon referral of a case by the administrative law judge to the Parole Board for further revocation consideration, or the issuance of a warrant, the board may issue a parole violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a parole violation has taken place. Such warrant shall be issued by the chairman, except that in the absence or disability of the chairman, the signatures of four (4) board members shall be sufficient to issue a warrant. In the event there is no quorum of the board present to concur that probable cause exists, the chairman is authorized to issue a parole violation warrant if he, upon review, concurs that probable cause exists to issue said warrant. If the chairman issues a parole violation warrant in the absence of a quorum of the board, the board shall vote, as soon as is reasonable on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the chairman.

Section 4. Absconding. In cases where it appears that a parolee has absconded from parole supervision, it otherwise appears that the parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the Parole Board may, upon sworn affidavit of the supervising parole officer swearing that said violation has occurred, issue a warrant for the arrest of the parolee. In cases where the parolee is being supervised outside the state of Kentucky, a parole violation warrant may be issued based upon an unsworn written report from the supervising state setting forth facts sufficient to conclude that there is reasonable grounds to believe that a violation of parole has occurred. Except in those cases where a preliminary parole revocation hearing is held by the supervising state, upon apprehension, a preliminary parole revocation hearing is conducted as set forth elsewhere in Section 1 of this regulation, except that if the administrative law judge finds that there is probable cause to believe that any violations set forth in the warrant have been committed by the parolee and that the warrant, as to any or all charges contained within it, was validly issued, the parolee must be ordered returned to the appropriate institution of the Kentucky Corrections Cabinet for further consideration by

the Parole Board except as set forth elsewhere within this section. In the event no probable cause is shown, the case must be referred to the Chairman of the Parole Board who must then withdraw the warrant, returning the parolee to supervision. Notwithstanding a finding of probable cause, the administrative law judge may, upon motion of the parole officer, or upon finding there are overwhelming mitigation factors present, not known to the board at the time the warrant was issued, refer the case back to the Parole Board for a decision as to whether the warrant should be exercised or withdrawn. This referral back to the board may include a recommendation from the administrative law judge that the warrant be rescinded. This recommendation shall be advisory only and shall not be binding on the board. If the warrant is withdrawn the parolee shall be returned to normal parole supervision, subject to any additional conditions the Parole Board may impose. If the warrant is ordered exercised, the parolee shall be ordered returned to the appropriate institution.

Section 5. Waiver of Preliminary Parole Revocation Hearings. Any parolee charged with a violation of his parole may waive appearance before an administrative law judge of the Parole Board and by so doing waive his preliminary parole revocation hearing. Parolees desiring to waive such hearings shall execute the prescribed forms which shall be submitted to the board or its administrative law judge for approval. Such waivers may be accepted within the discretion of the board or its administrative law judges. No wavier will be accepted unless it is found that the waiver was entered into by the parolee knowingly, and voluntarily and that the parolee is, and clearly understands that he is admitting guilt as to the violations charged. Notwithstanding the submission and acceptance of a waiver of the preliminary parole revocation hearing, the parolee may still submit evidence in mitigation of his conduct. After approval of the waiver, the matter will proceed in the same manner as after a hearing before an administrative law judge.

Section 6. Final Parole Revocation Hearings. Final parole revocation hearings will be held within thirty (30) days after the return of the parolee to a state institution. At this hearing, the parolee will have the charges, specified in the warrant, explained to him and he will be given the opportunity to admit or deny them. If the inmate admits to the charges, then the board shall receive proof in mitigation of the charges. If the parolee wishes to be represented by legal counsel and wishes to present witnesses on his behalf, he must request a special hearing. If granted by the board, a short deferment shall be given so the special hearing can be scheduled in central office and the parolee can secure legal counsel. The request for a special hearing by a parolee must occur at the beginning of the final parole revocation hearing, before he admits or denies guilt. The parolee shall be notified of his right to request a special hearing at his preliminary parole revocation hearing. It is the responsibility of the parolee, and his alone, to request a special hearing if he so desires one.

Section 7. Special Hearings. (1) Special hearings will be conducted in the central office of the Parole Board, unless the Parole Board changes the site for security or other factors it deems pertinent. In cases so heard, where either the parole officer or the parolee requests the issuance of subpoenas to compel the appearance of a witness or production of documents, the board will issue them pursuant to KRS 439.390, providing no claims for expenses incurred by these witnesses will be submitted to the board, as it has no authorization to pay such expenses.

(2) At the special hearing, the following order of proceedings shall be followed:

(a) The parolee, parole officer and all witnesses shall be sworn in by the Parole Board.

(b) The board will present a short statement of the charges against the parolee.

(c) The parole officer will present proof to substantiate the charges, subject to cross-examination by the parolee.

(d) The parolee will present proof to rebut the parole officer's charges, subject to cross-examination by the parole officer.

(e) The parole officer may put on any rebuttal proof subject to cross-examination.

(f) The board may question both the parolee and the parole officer as well as any witnesses.

(g) The board will then make a determination as to whether the parolee has violated his parole.

(h) If the parolee is found in violation or if he admits the violation and has proof in mitigation, the board will receive proof from the parolee in mitigation of the violation subject to cross-examination.

(i) The board will then make a determination as to the disposition of the case and the parolee is either notified in person immediately or in writing as soon as practical.

Section 8. Waiver of Final Parole Revocation Hearing. A parolee being held pursuant to a parole violation warrant may, subsequent to his preliminary parole revocation hearing, or acceptance of a waiver thereof, request that he be allowed to waive his final parole revocation hearing. Parolees desiring to waive such hearings shall execute the prescribed form and submit it to the board. Acceptance of such waiver will be totally within the discretion of the board and only upon a finding that the waiver is entered into knowingly and voluntarily and that the parolee is admitting guilt as to the violations charged. Waiver of the right to the final hearing shall also be considered as waiver of any rights to a special hearing as provided for elsewhere in this regulation. In the event that waiver of the final hearing is accepted, the final decision on the revocation of the parolee's parole will be made by the majority vote of the board without any further proceedings.

Section 9. This section repeals 501 KAR 1:020.

JOHN C. RUNDA, Ph.D., Chairman
APPROVED BY AGENCY: September 9, 1988
FILED WITH LRC: September 12, 1988 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1988 at 1 p.m. in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor,

State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John C. Runda, Ph.D.
(1) Type and number of entities affected: 10,000 parolees, and 250 parole officers.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None. All of the costs involved with the implementation of the regulation are included in the operational budget.
2. Continuing costs or savings: None. Same as (2)(a)1.
3. Additional factors increasing or decreasing costs: None. Same as (2)(a)1.
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. To apply different standards and procedures for the revocation of parole would deprive parolees equal protection and due process.

KENTUCKY PAROLE BOARD

501 KAR 1:050. Granting final discharge from parole.

RELATES TO: KRS 439.352, 439.356, 439.358
STATUTORY AUTHORITY: KRS 439.330(1)(g), 439.354
NECESSITY AND FUNCTION: KRS 439.330(1)(g) establishes the authority of the Parole Board to grant a final discharge from parole. KRS 439.354 establishes the need to set a period of time which the parolee must successfully spend on parole before the granting of a final discharge from parole. This regulation establishes a set time period for the issuance of a final discharge from parole as well as specific criteria for its issuance. The purpose of this regulation is to continue to encourage lawful activity and compliance with the conditions of parole on the parolee's part and to provide successful integration back into society. All matters relating to the granting of a final discharge from parole shall be conducted in the following manner.

Section 1. A parolee may request a final discharge from parole after the expiration of twenty-four (24) months clear conduct from the date of parole and receipt, by the board, of a full report from the parole officer of the parolee's activities while on parole or the maximum expiration date for all sentences excluding a life sentence. On a life sentence, the parolee may request a final discharge from parole upon the completion of a minimum of five (5) years on active or inactive parole supervision and receipt, by the board, of a full report from the parole officer of the parolee's activities while on parole, assuming clear conduct from the date of parole release. After ten (10) years of service on parole, the board shall consider the parolee for a final discharge from parole. However, the board retains the right to grant an early final discharge from parole.

Section 2. Upon receipt of evidence that a parolee has satisfied all preceding requirements, the chairman may issue, or cause to be issued, a certificate of final discharge from parole on any sentence upon receipt of a written request from the parole officer and considered by the full board.

Section 3. When a parolee reaches the maximum expiration date of his sentence, a final discharge from parole shall be issued automatically by the board.

Section 4. This section repeals 501 KAR 1:015.

JOHN C. RUNDA, Ph.D., Chairman
APPROVED BY AGENCY: September 9, 1988
FILED WITH LRC: September 12, 1988 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1988 at 1 p.m. in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John C. Runda, Ph.D.
(1) Type and number of entities affected: 7,000 inmates, 10,000 parolees, and 250 parole officers.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None. All of the costs involved with the implementation of the regulation are included in the operational budget.
2. Continuing costs or savings: Same as (2)(a)1.
3. Additional factors increasing or decreasing costs: Same as (2)(a)1.
(b) Reporting and paperwork requirements:
(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? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 5:060. Entrance of five-year olds into kindergarten for compulsory attendance purposes.

RELATES TO: KRS 159.010, 159.020
STATUTORY AUTHORITY: KRS 156.070, 159.130
NECESSITY AND FUNCTION: KRS 159.010 and 159.020 require any five (5) year old child who has voluntarily "entered" kindergarten to thereafter be subject to compulsory attendance laws. This regulation is necessary to interpret official and final entry into kindergarten for such children to occur only after the first two (2) months of school to allow for withdrawal of five (5) year olds demonstrating a lack of maturity or readiness for the kindergarten program.

Section 1. Any five (5) year old child not otherwise subject to compulsory attendance laws, but who voluntarily enrolls in kindergarten at the beginning of the school year, may be withdrawn from the program at any time within the first two (2) school calendar months, at the end of such trial period of time such a child shall be considered irrevocably entered into kindergarten for purposes of KRS 159.010 and 159.020.

HENRY POGUE IV, Chairman
APPROVED BY AGENCY: September 14, 1988
FILED WITH LRC: September 15, 1988 at 11 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Friday, October 21, 1988, at 10 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board for Elementary and Secondary Education at its September meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before October 16, 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: Clarence F. Salyer
(1) Type and number of entities affected: Local public school districts. 178 districts.
(a) Direct and indirect costs or savings to those affected: Funding not 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:
(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: There does not appear to be any viable alternative to the impact of this amendment to the school entrance law.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 159.010 and 159.020.
(a) Necessity of proposed regulation if in conflict: If regulation not adopted, strict interpretation of above statutes would prevent unready five year olds from withdrawing from kindergarten.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Allowing immature and unready to withdraw from kindergarten vital, but consistent interpretation of "entered kindergarten" for all five year olds necessary to comply with statutes.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Rehabilitation

706 KAR 1:050. Office of Vocational Rehabilitation appeals procedures.

RELATES TO: KRS 163.140, 163.160, 29 U.S.C. §722
STATUTORY AUTHORITY: KRS 156.070, 163.140
NECESSITY AND FUNCTION: 29 U.S.C. §722(d) requires state procedures for the review of determinations made by rehabilitation personnel with respect to eligibility of individuals for basic rehabilitation and independent living services; KRS 163.160 accepts and agrees to comply with federal vocational rehabilitation acts; and KRS 163.140 sets forth rulemaking authority with respect to the state vocational rehabilitation agency. This regulation establishes necessary appeals procedures for determinations made by Office of Vocational Rehabilitation personnel.

Section 1. Procedures are hereby established and maintained in accordance with 29 U.S.C. §722(d) to assure to applicants and recipients dissatisfied with any action requiring provision of or denial of rehabilitation services a review of such action. These procedures are as follows:
(1) The individual, or when appropriate his or her parents or guardian, shall be informed of his or her right to, and the procedures for, requesting an administrative review. Information shall also be made available on the Client Assistance Program of the Education and Humanities Cabinet, the services provided by the program, and how to contact the program.
(2) Should an applicant or client be dissatisfied with an action regarding the furnishing or denial of services, the individual may telephone or write within sixty (60) days of notification of the Office of Vocational Rehabilitation's action or inaction to request an administrative review by the grants

administrator. The following procedures shall be followed in an administrative review:

(a) The grants administrator shall conduct the administrative review;

(b) The administrative review shall be held in a timely manner, but with such review not to exceed twenty (20) working days of receipt of the request;

(c) The review shall be held at a time and place convenient to the individual requesting the review, and the individual shall be notified in writing as to the time and place of the review and the right to be represented at the review by counsel or designated advocate; and

(d) A report of the findings of the review shall be sent to the individual within five (5) working days from the completion date of the review and shall indicate an administrative review decision to be binding for all agency staff.

(3) When there is an agency-initiated change which discontinues a service set forth in an individualized written rehabilitation program, the following procedures shall be observed:

(a) The client shall be notified of the decision and the basis for that decision at least ten (10) working days prior to the effective date of the change through a procedure which is verifiable (for example, certified mail with receipt requested), unless circumstances beyond the control of the agency make the ten (10) day notice impossible;

(b) Such notification shall advise the client that services may be continued while the client is afforded an opportunity to exercise appeal rights for an expedited administrative review;

(c) Such notification shall advise that if the client wishes any disputed service to continue during an expedited review, request for an expedited administrative review must be received by the grants administrator prior to the effective date of the proposed change;

(d) The notification shall also advise the client that, upon receipt of a request for an expedited administrative review, the expedited administrative review shall be completed and a decision rendered in not more than thirty (30) calendar days from the effective date of the change.

(4) Should an applicant or client be dissatisfied with any determinations made by Office of Vocational Rehabilitation staff concerning the furnishing or denial of services or the findings and decision of an administrative review, the affected individual may request an impartial hearing by contacting the Office of Vocational Rehabilitation's office head. The following procedures shall be followed:

(a) The office head shall appoint an impartial hearing officer who has a background and experience in, and knowledge of, the delivery of vocational rehabilitation services and who has not taken part in the action under consideration and who is not an employee of the Office of Vocational Rehabilitation to conduct a formal hearing;

(b) The hearing shall be held within forty-five (45) calendar days after receipt of the initial request for appeal, except reasonable time extensions may be made for good cause shown by a party or at the request of both parties;

(c) The hearing shall be held at a time and place convenient to the individual requesting the hearing, and the individual shall be notified in writing as to the time and place of the hearing and the right to be represented at the hearing by counsel, friend, parent or guardian, or other appropriate advocate;

(d) Agency staff involved in the action of dispute shall be present at the hearing and the individual or designated representative shall have the opportunity for cross-examination, to present evidence, information and witnesses and examine all documents submitted by the Office of Vocational Rehabilitation;

(e) The decision of the impartial hearing officer shall set forth the issues, relevant facts brought out at the hearing, the pertinent provisions in the state plan and the Rehabilitation Act on which the decision is based and the reasoning that led to the decision;

(f) The verbatim transcript of the testimony presented during the hearing, together with all exhibits filed in the proceedings, shall constitute the exclusive record for the decision; and

(g) The individual and the office head shall be sent the decision within twenty (20) calendar days from the completion of the hearing, unless both parties agree to a reasonable time extension to allow the hearing officer to review the transcript before finalizing the decision.

(5) Within twenty (20) calendar days of the mailing of the decision to the individual, the office head shall inform the individual in writing of his intention to accept or review such decision in whole or in part.

(6) The decision of the office head to review any impartial hearing officer's decision shall be based on the following standards:

(a) The reasonableness of the hearing officer's decision, and whether it is in any way arbitrary, capricious, or an abuse of discretion;

(b) Whether the hearing officer's decision is supported by substantial evidence and is consistent with the facts and applicable federal and state policy; and

(c) Whether in the decision the impartial hearing officer has given appropriate and adequate interpretation to such factors as:

1. The federal statutes, regulations and policies as they apply to the specific issue(s) in question;

2. State law and regulations as they relate to the issue(s) in question;

3. The state plan as it applies to the specific issue(s) in question;

4. The state procedures manual as it applies to the specific issue(s) in question;

5. Key portions of conflicting testimony;

6. State agency options in the delivery of services where such options are permissible by federal statute; and

7. Restrictions in federal statute with regard to such supportive services as maintenance and transportation.

(7) If the office head decides to review the decision of the impartial hearing officer, the individual shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.

(8) The office head's review shall be limited to the findings with which the office head took issue, the transcript of testimony and exhibits presented at the hearing, the hearing officer's written decision, and any additional relevant written documentation submitted by the individual.

(9) A final decision stating the findings and

grounds for the decision shall be made in writing by the office head within twenty (20) calendar days of the decision to review the decision of the impartial hearing officer, unless the individual requests a delay in order to submit additional evidence bearing on the final decision and both the individual and the office head agree to a reasonable time extension for the final decision.

(10) When a final decision is made, a copy of such decision shall be provided to the individual or his representative.

(11) The office head shall not delegate responsibility to make any such final decision to any other officer or employee of the Kentucky Office of Vocational Rehabilitation.

(12) The decision of the office head shall be the final state agency action, and there shall be no further recourse that the individual can pursue administratively, other than seeking judicial review of that decision in the courts.

(13) The Office of Vocational Rehabilitation shall not provide legal counsel or the costs of legal counsel for an applicant or client who appeals an action concerning the furnishing or denial of services.

HENRY POGUE IV, Chairman

APPROVED BY AGENCY: September 14, 1988

FILED WITH LRC: September 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing has been scheduled on Friday, October 21, 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 for Elementary and Secondary Education at its September meeting. Those persons wishing to attend and testify shall contact in writing: Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, on or before October 16, 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: Joan Barker

(1) Type and number of entities affected: Office of Vocational Rehabilitation grant programs under Title VII, Part A, of the Rehabilitation Act of 1973.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: No changes from most recent plan.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Program administration is mandated by the Rehabilitation Act of 1973 as amended, and by federal regulations in 34 CFR Part 365.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because the program is offered equally to all persons in the Commonwealth who are eligible for services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title VII, Part A, of the Rehabilitation Act of 1973, as amended most recently by the Rehabilitation Act Amendments of 1986 (P.L. 99-506), require a three year state plan for independent living rehabilitation services. The current Kentucky State Plan for Independent Living Rehabilitation Services was implemented on October 1, 1987. Federal regulations in CFR Part 365 require annual updates of three attachments to the State Plan for Independent Living Rehabilitation Services, and allow, as needed, for appropriate revisions.

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the September 6 and 7, 1988 Meeting

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 6, 1988 at 2 p.m. and on Wednesday, September 7, 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. On motion of Senator McCuiston, seconded by Representative Meyer, the minutes of the September 3, 1988 meeting were approved.

Present September 6, 1988 were:

Members: Representative Mark D. O'Brien, Chairman; Senator Pat McCuiston; Representatives Jim Bruce, and Joe Meyer.

Present September 7, 1988 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Harold Haering and Pat McCuiston; Representatives Jim Bruce, Ronny Layman and Joe Meyer.

Guests: Representative J. R. Gray; James T. Corum, Art Williams, Jack Wilson, Natural Resources & Environmental Protection Cabinet; Arthur Hatterick, Jr., Personnel Board; Scott Akers, Gerald Geiser, Revenue Cabinet; Greg Holmes, Board of Dentistry; Larry Perkins, Board of Examiners & Registration of Landscape Architects; Don L. Notter, J. Michael Noyes, Department of Agriculture; James H. Jones, KY Development Finance Authority; Barbara Jones, Cheryl Roberts, Corrections Cabinet; G. Stephen Anders, Joseph C. Breeze, Charles Briggs, Joseph R. Dawson, Marjorie Klee, Jerome L. Lentz, Gary Martin, Edward Sue Perkins, D. B. Price, Sandra G. Pullen, Yvette M. Smith, John Trager, Transportation Cabinet; Gary Bale, Deborah Hendricks, Charles D. Wade, Akeel Zaheer, Department of Education; Patrick Watts, Department of Insurance; Judith G. Walden, Department of Housing, Buildings and Construction; Barbara Coleman, Bonnie Clements, Dudley J. Conner, Mel Counts, Don Dixon, William Durrett, III, Eva Ellis, Kenneth Fiser, Ked R. Fitzpatrick, Omar L. Greeman, Linda Howard, Suann Hudson, Cliff Jennings, Greg Lawther, Anita Moore, Michael Moser, M.D., Robert Nelson, David Nichols, Mark Yancey, Cabinet for Human Resources; Kathleen Ryan, NKC Enterprises, Inc.; Nancy Cox, James S. Judy, KAHCF; Mike Helton, KY petroleum Council; Tom Fitzgerald, KY Resources Council; Bruce Rowen, American Trucking Associations; Howard G. Myers, KY Council of Forest Industries; O.B. Arnold, KY Motor Transportation Association; Michael F. Jones, Overnite Transportation Company; Pat McKlvees, Dusty Rhodes, United Parcel Service; Marie Alagia Cull, Funeral Directors Association of KY and KY Association of Health Care Facilities; Joe Kraft, Funeral Directors Association of KY; Sarah S. Nicholson, KY Hospital Association; Ron Thornton, Blue Cross/Blue Shield of KY; Amanda S. Logan, Public Protection & Regulation Cabinet; Sherry L. Grim, Home Builders Association of KY.

Press: Tom Loftus, Courier-Journal

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Donna Pierce, Ann Gordon and Carla Arnold.

The Administrative Regulation Review Subcommittee met on September 6-7, 1988, and submits this report:

The Subcommittee determined that the following administrative regulations do not comply with KRS Chapter 13A or other applicable statutes as set forth below:

Personnel Board: Personnel Rules

101 KAR 1:320 (Probationary period.) Chairman O'Brien pointed out that the amendments in Section 1(1) and (10) repeat the language found in KRS 18A.111. He pointed out that since KRS 13A.120(1)(e),(f) prohibit the promulgation of administrative regulations that prescribe the same procedure as prescribed in a statute, or set out the same comprehensive scheme of regulation set out in the statute, the amendments did not comply with KRS Chapter 13A. He added that insofar as this administrative regulation repeats language found in KRS Chapter 18A, it violated KRS Chapter 13A and should be withdrawn. The Subcommittee approved a motion attaching a statement to this regulation that this administrative regulation is in excess of statutory authority.

101 KAR 1:360 (Appeal procedures.) Chairman O'Brien pointed out that Section 1(4) and (5) repeat language found in KRS Chapter 18A. He pointed out that since KRS 13A.120(1)(e),(f) prohibit the promulgation of administrative regulations that prescribe the same procedure as prescribed in a statute, or set out the same comprehensive scheme of regulation set out in the statute, the amendments did not comply with KRS Chapter 13A. Chairman O'Brien stated that Section 3(11)(a) and (b) is unnecessary since the board, as an administrative body empowered to conduct hearings, has such authority. This subsection should be deleted. He also noted that the amendments to KRS 18A.095 enacted during the 1988 regular session restricted ex parte communications to those relating to prehearing mediation in settlement procedures. He stated that Section 3(11)(c) should be reworded to comply with the amendments to KRS 18A.095. Board personnel stated that KRS Chapter 18A directed the board to promulgate comprehensive administrative regulations. Board personnel stated that this directive may conflict with the restrictions in KRS Chapter 13A, but that the Board felt it must promulgate these administrative regulations even if they repeated language found in KRS Chapter 18A. It was pointed out to Board personnel that the promulgation of administrative regulations must comply with the provisions of KRS Chapter 13A, and that KRS Chapter 13A prohibited the repetition of language already found in statutes, and intended for those governed by KRS Chapter 18A, for example, to read and rely upon the statute. The Subcommittee approved a motion attaching a statement to this regulation that this administrative regulation is in excess of statutory authority.

Corrections Cabinet: Department for Local Facilities: Juvenile Holding Facilities

501 KAR 9:020 (Administration; management.) This administrative regulation was amended to correct a statutory citation. The requirement of Section 2(2) that fiscal court provide funds for the legal representation of a jailer was determined to exceed statutory authority. The Subcommittee approved a motion to attach a

statement of objection to this administrative regulation.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:005 (Safety regulations.) O. B. Arnold, Kentucky Motor Transportation Association; Howard G. Myers, Kentucky Council of Forest Industries; and Bruce Rowen, American Trucking Associations spoke against this regulation. This administrative regulation requires that certain commercial motor vehicles, subject to the taxes imposed by KRS 138.660, register and display control numbers. The control numbers may be either ICC MC number required by 49 CFR 1058.2, Department of Transportation number required by 49 CFR 290.21, or Kentucky Motor Fuel Use License Number (KYU) required by KRS 138.665. This administrative regulation requires that this number be placed on both sides of the main body of the cab, directly under the name or name and address of the motor carrier, no higher than the top of the side window and no lower than the bottom of the cab door. The vehicle's unit number may be placed on the side of the vehicle if it is display in conjunction with a KYU number. Those opposed to the regulation objected to this requirement because it would require carriers to move the numbers from one location on the side of the vehicle to another. It did not appear that any difficulty would occur to the Cabinet if the numbers were permitted to remain where they were. To enforce this administrative regulation would result in great expense. Those opposed presented a letter to the Cabinet from the Federal Highway Administration objecting to this requirement. They added that the information the Cabinet needs may be obtained without a change in location of number. Additional objections related to the use of a regulation governing safety to impose a requirement that is related only to taxes imposed on carriers. Finally, questions were raised relating to compliance with the restrictions on promulgation of emergency administrative regulations and on the withdrawal of the administrative regulation. The Subcommittee approved a motion that this administrative regulation exceeds statutory authority. The Subcommittee directed staff to prepare a report on the possible misuse of emergency administrative regulations, the withdrawal of administrative regulations, and on compliance with requirements of KRS Chapter 13A relating to the provision of topics into specific subject matter and to the placement of such in administrative regulations.

Department of Vehicle Regulation: Driver Improvement

601 KAR 13:020 (Point system.) Chairman O'Brien and Representative Meyer objected to Section 4 of this administrative regulation. Section 4 provides that no points would be assessed for speeds in excess of ten miles per hour or less over a speed limit of 55 miles per hour on limited access highways of four or more lanes. Subcommittee members pointed out that KRS 186.572 specifically provides that no point shall be assessed for such violations on such highways where the speed limit is 65 miles per hour. Agency personnel stated that the reports received from the courts do not distinguish whether the violations occurred on highways on which the speed limit is 55 or 65 miles per hour. Subcommittee members responded that this was a problem to be corrected by the concerned administrative bodies but that since the regulation violated the specific provisions of the statute, it exceeded statutory authority. The Subcommittee approved a motion to attach a statement to this administrative regulation that it exceeds statutory authority.

Cabinet for Human Resources: Office of Administrative Services: Vital Statistics

901 KAR 5:110 (Blood and body fluid precautions.) This administrative regulation lists 93 diseases and conditions for which blood and body fluid precautions must be taken, with proper notification to funeral directors and their employees, among others. This administrative regulation also provides that, in addition to the 93 specified diseases and conditions, such notification shall be given with regard to "all other communicable diseases." Representatives Bruce, Meyer and O'Brien objected on the grounds that it was not sufficiently established that all listed diseases would require such precautions and notice. They added that "all other communicable diseases" was too inclusive and did not provide sufficient notice or standards to the regulated entities. The Subcommittee approved a motion that this regulation exceeded statutory authority.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

General Government Cabinet: Board of Examiners and Registration of Landscape Architects

201 KAR 10:050 (Fees.) This administrative regulation was amended. Section 1(4) was amended to delete the words "for each year...since the license expired". Board personnel stated that this amendment was necessary in order to prevent the assessment of the sixty dollar renewal fee for each year a licensee did not renew. Representative Meyer questioned whether there was statutory authority to assess a restoration fee, the renewal fee, and a penalty. It appeared that the statute provided for some, but not all, of the fees assessed. He requested staff to research the issue and report back.

Corrections Cabinet: Office of the Secretary

501 KAR 6:110 (Roederer Farm Center.) The reference material to this administrative regulation was amended to cite Vitek v. Jones; to cite KRS 500.080, 520.050 and 520.060; and to amend language to express the mandatory by "shall" rather than by "should" as required by KRS Chapter 13A. The Cabinet also provided a copy of the Interlibrary Loan Code, 1980, American Library Association, which the Cabinet inadvertently failed to submit when the regulation was filed.

Department for Local Facilities: Juvenile Holding Facilities

501 KAR 9:050 (Physical plant.) This administrative regulation was amended to correct typographical errors.

501 KAR 9:090 (Medical services.) This administrative regulation was amended to delete the word "juvenile" and to inert in lieu thereof the word "inmate". This amendment made it clear that the capacities of facilities was not exceeded. It was also amended to correct

typographical errors.

501 KAR 9:100 (Food services.) This administrative regulation was amended in order to clarify that the rule specifying the minimum number of calories for a diet may be overridden by proper medical prescriptions.

501 KAR 9:120 (Admission; release.) This administrative regulation was amended to provide a definition for "uniform offense report."

501 KAR 9:150 (Hearings, procedures, disposition.) This administrative regulation was amended to correct incorrect citation of statutes.

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:070 (Truck dimension limits.) This administrative regulation was amended as follows: Truck dimension limits were amended to comply with federal requirements; changes were made to highway listings in Section 2(b); and grammatical changes were made.

Public Protection and Regulation Cabinet: Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 7:020 (Building code.) This administrative regulation was amended to provide an exemption from BOCA requirements relating to earthquake safety requirements on height increases in buildings in Zone 1. Agency personnel assured members of the Subcommittee that the Board determined that such an exemption for buildings in the zone least affected by earthquakes would not weaken the life safety features of the building code. This regulation was also amended to comply with the incorporation by reference requirements and other requirements mandated by amendment to KRS Chapter 13A during the last session.

Plumbing

815 KAR 20:060 (Quality and weight of materials.) This administrative regulation was amended to comply with requirements mandated by amendment to KRS Chapter 13A during the last session. It was also amended to specify the statutory authority; to provide dates on incorporated materials and to notify the public where they may be inspected; to clarify the standards and procedures specified in Section 19 for exemptions to materials specified in this regulation; and to provide a definitions section for terms that are not commonly understood in the industry and that have a special meaning.

815 KAR 20:100 (Joints and connections.) This administrative regulation was amended specify proper statutory authority.

815 KAR 20:120 (Water supply and distribution.) This administrative regulation was amended to provide proper citations in the "STATUTORY AUTHORITY" section, and to change language to properly express mandatory requirements.

815 KAR 20:191 (Minimum fixture requirements.) This administrative regulation was amended to provide proper citations in the "STATUTORY AUTHORITY" section; to correct the format in order to comply with KRS Chapter 13A; and to make grammatical changes.

Cabinet for Human Resources: Department for Health Services: Milk and Milk Products

902 KAR 50:120 (Unpasteurized goat milk.) This administrative regulation was amended to correct a typographical error in Section 5(1)(c).

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Personnel Board: Personnel Rules

101 KAR 1:325 (Initial probationary periods in excess of six months.) Chairman O'Brien asked the Personnel Board personnel if the Commissioner had recommended the probationary period added to this administrative regulation as required by KRS 18A.0751(4)(e). Board personnel stated that the Commissioner had so recommended.

Revenue Cabinet: Department of Professional and Support Services: Income Tax; Corporations

Representative Meyer questioned the three year delay in promulgating and implementing the administrative regulations listed below. Agency personnel stated that the old formula had been applied and that, now, an audit would be conducted to adjust payments, if necessary, under the new procedure. Representative Meyer questioned whether an individual taxpayer would be permitted successfully to negotiate for three years and pay a previous rate that had been altered by statute. He requested an explanation as to whether or not state revenues would be affected. Agency personnel stated that the regulations were revenue neutral.

103 KAR 16:100 (Apportionment and allocation; telephone and telegraph companies.)

103 KAR 16:110 (Apportionment and allocation; pipeline companies.)

103 KAR 16:130 (Apportionment and allocation; railroad companies.)

103 KAR 16:145 (Apportionment and allocation; barge line companies.)

General Government Cabinet: Board of Dentistry

201 KAR 8:400 (Complaint procedure.)

201 KAR 8:410 (Procedures for disciplinary hearings.)

Commerce Cabinet: Department of Agriculture Livestock Sanitation

302 KAR 20:056 (Qualifications and eligibility requirements on state brucellosis indemnity payments for negative exposed cattle.) In response to questions raised by Representative Bruce and Senator McCuiston, agency personnel explained that, although the state indemnity payment for slaughtered adult breeding cows from a brucellosis infected herd was reduced by $25, the payment received would not decrease. In addition to the state payment, the federal government would make a payment, both payment resulting in a greater indemnity. Although the federal payment is not mentioned in this regulation, potential recipients are made aware of it.

Economic Development Cabinet: Department of Business Development: Bond Project

306 KAR 2:010 (Economic development bond project reporting requirements.)

Development Finance Authority: Kentucky Development

307 KAR 1:010 (Bond financed loan program.)

Corrections Cabinet: Office of the Secretary

501 KAR 6:030 (Kentucky State Reformatory.)

501 KAR 6:050 (Luther Luckett Correctional Complex.)

501 KAR 6:060 (Northpoint Training Center.)

Material incorporated by reference in this administrative regulation inadvertently had not been filed. The Cabinet submitted this material at this meeting. Material incorporated by reference consisted of NFPA Code 30 and the National Electrical Code. Representative Meyer asked whether this administrative body must submit a copy of this material if it already has been incorporated by reference by another administrative body such as the Department of Housing, Buildings and Construction. It was pointed out that each administrative body must submit one copy of material that it incorporates by reference, even though another administrative body may have also submitted a copy of this material. However, if an administrative body incorporates the same material that another administrative body has already incorporated, the Regulations Compiler pointed out that the second incorporating administrative body may cross-reference the administrative regulation of the first incorporating administrative body and make the standards contained within that material applicable to its administrative regulation.

501 KAR 6:070 (Kentucky Correctional Institute for Women.)
501 KAR 6:120 (Blackburn Correctional Complex.)
501 KAR 6:130 (Western Kentucky Farm Center.)
501 KAR 6:140 (Bell County Forestry Camp.)

Department for Local Facilities: Juvenile Holding Facilities

501 KAR 9:010 (Definitions.)
501 KAR 9:030 (Fiscal management.)
501 KAR 9:040 (Personnel.)
501 KAR 9:060 (Security; control.)
501 KAR 9:070 (Safety; emergency procedures.) A copy of the "NFPA Life Safety Code of 1981," incorporated by reference, was submitted at the meeting.
501 KAR 9:080 (Sanitation; hygiene.)
501 KAR 9:110 (Classification.)
501 KAR 9:130 (Juvenile programs; services.)
501 KAR 9:140 (Juvenile rights.)

Transportation Cabinet: Department of Highways: Division of Toll Facilities: Toll Facilities

600 KAR 2:020 (Emergency vehicles and vehicles in processions on the toll roads.)

Office of Minority Affairs

600 KAR 4:010 (Certification of disadvantaged, minority and women business enterprises.)

Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:025 (Transporting hazardous materials; permit.)

Motor Vehicle Tax

601 KAR 9:090 (Procedures for inspecting vehicles.)
601 KAR 9:140 (Temporary registration tags issued by county clerks.)

Motorcycle Safety

601 KAR 14:010 (Headgear and eye-protective devices.)

Department of Highways: Maintenance

603 KAR 3:051 (Recyclers.)

Education and Humanities Cabinet: Department of Education: Office of Instruction: Teacher Education

704 KAR 15:010 (Accreditation of institutions.)

Teacher Certification

704 KAR 20:005 (Kentucky standards for preparation-certification of professional school personnel program approval.)
704 KAR 20:015 (Rank I classification.)
704 KAR 20:020 (Fifth-year program for renewal of provisional teaching certification and for Rank II equivalency.)
704 KAR 20:025 (Ranking of vocational trade instructors.)
704 KAR 20:120 (Emergency certification.)
704 KAR 20:145 (School media librarians, provisional certificate.)
704 KAR 20:146 (School media librarians, endorsement.)
704 KAR 20:150 (School media librarians, standard certificate.)
704 KAR 20:490 (Recruitment plan for position of school media librarian.)
704 KAR 20:500 (Standard certificate for teachers of exceptional children and youth--communication disorders.)
704 KAR 20:510 (Recruitment plan for teachers of exceptional children.)

Office of Vocational Education: Instructional Programs

705 KAR 4:010 (General standards.)
705 KAR 5:140 (Student medical and accident insurance.)

Office of Education for Exceptional Children: Exceptional and Handicapped Programs

707 KAR 1:060 (Identification, evaluation and placement policy and procedures.)
707 KAR 1:080 (Appeals board.)

Public Protection and Regulation Cabinet: Department of Insurance: Rates and Rating Organizations

806 KAR 13:110 (Rate standards for property and casualty insurance "flex rating".)

Cabinet for Human Resources: Department for Health Services: Sanitation

902 KAR 10:081 (Construction standards for components of onsite sewage disposal systems.)
902 KAR 10:085 (Kentucky onsite sewage disposal systems regulation.)

Department for Social Insurance: Public Assistance

904 KAR 2:016 (Standards for need and amount; AFDC.)
904 KAR 2:020 (Child support.)
904 KAR 2:116 (Low income home energy assistance program.)
904 KAR 2:170 (Incorporation by reference of materials relating to the child support program.)

Department for Medicaid Services

907 KAR 1:004 (Resource and income standard of medically needy.)
907 KAR 1:008 (Outpatient surgical clinics.)
907 KAR 1:015 (Payments for hospital outpatient services.)
907 KAR 1:020 (Payment for drugs.)
907 KAR 1:028 (Other laboratory and x-ray services.)
907 KAR 1:029 (Payments for laboratory services.)
907 KAR 1:031 (Payments for home health services.)
907 KAR 1:042 (Amounts payable for hospital furnished skilled nursing and intermediate care facility services.)
907 KAR 1:170 (Payments for home and community based services.)
907 KAR 1:360 (Preventive and remedial health care services provided through interagency agreement.)

The following administrative regulation was withdrawn at the request of the promulgating administrative body and is not to be referred to an appropriate jurisdictional committee for review:

Cabinet for Human Resources: Department for Health Services: State Health Plan

902 KAR 17:010 (State health plan.) In response to questions by Subcommittee members, agency personnel acknowledged that the State Health Plan has not been approved by the Governor. Since the Health Plan has not been approved by the Governor, there is no authority to promulgate an administrative regulation implementing the Plan. Even though an emergency administrative regulation had been approved, the previous approval by the Governor of the State Health Plan, which did not occur, is required before the emergency may be filed. Therefore, agency personnel agreed to withdrawn the ordinary and emergency administrative regulations. When the Governor approves the State Health Plan, the administrative body may file the administrative regulation. If the conditions for an emergency administrative regulation exist, it may also file an emergency administrative regulation. Because no administrative regulation concerning the State Health Plan could legally be filed, there is nothing to refer to an appropriate jurisdictional subcommittee. If the administrative regulation is properly filed, a referral to an appropriate jurisdictional subcommittee, after review by this Subcommittee, may be made.

The following administrative regulation was deferred at the request of the promulgating administrative body and is not to be referred to an appropriate jurisdictional committee for review:

Cabinet for Human Resources: Office of Inspector General: Office of Inspector General

906 KAR 1:040 (Blood establishment licensure.)

The Subcommittee had no objections to emergency regulations which had been filed.

Other Business:

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Sanitary Engineering

401 KAR 6:300 (Water well drillers certification; examination; fees.)

Art Williams, Commissioner Jim Corum, and Division Director Jack Wilson appeared to respond to questions raised by Subcommittee members relating to the issuance of temporary certification of water well drillers. Senator McCuiston pointed out that an extraordinary amount of time elapsed before such certifications were issued during the recent drought. Agency personnel acknowledged the delays and assured the Subcommittee that such would not reoccur. It was pointed out that such delays could result in corrective legislation during the next regular session.

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.

The Commissioner responded by letter to the Subcommittee. In his letter, he stated that the Department felt that the regulation was valid because it was valid when first promulgated. The Subcommittee felt that the question of validity should be determined by current statutory requirements. Department personnel agreed to meet with members of the Subcommittee on this issue.

The Subcommittee approved a motion to direct staff to submit material relating to the question of statutory authority for the promulgation of this administrative regulation to the Attorney General for review.

The Subcommittee adjourned at 12:10 a.m. until October 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 JUDICIARY-CRIMINAL
Meeting of August 17, 1988

The Interim Joint Committee on Judiciary-Criminal met on August 17, 1988, and submits this report:

The Committee determined that the following administrative regulation, as amended, complied with KRS Chapter 13A:

501 KAR 6:020 (Corrections policies and procedures.)

The Committee determined that the following regulations complied with KRS Chapter 13A:

107 KAR 1:050 (Prorating awards.)
501 KAR 6:040 (Kentucky State Penitentiary.)
501 KAR 6:060 (Northpoint Training Center.)
501 KAR 6:070 (Kentucky Correctional Institute for Women.)
501 KAR 6:080 (Corrections Cabinet Manuals.)
501 KAR 6:130 (Western Kentucky Farm Center.)
501 KAR 6:140 (Bell County Forestry Camp.)

The Committee adjourned at 12:25 p.m.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of August 10, 1988

The Interim Joint Committee on State Government met on August 10, 1988, and submits this report:

The Committee determined that the following regulation complied with KRS Chapter 13A:

105 KAR 1:010 (& E) (Contributions and Interest Rates) (Ky. Retirement Systems)

The Committee did not have objections to the emergency regulation which had been filed.

The Committee adjourned at 2:30 p.m. until September 14, 1988.

INTERIM JOINT COMMITTEE ON HEALTH & WELFARE
Meeting of August 31, 1988

The Interim Joint Committee on Health and Welfare met on August 31, 1988, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A:

902 KAR 3:060 & E
902 KAR 3:075 & E
902 KAR 3:080
902 KAR 3:115 & E
902 KAR 3:205 & E
902 KAR 3:210 & E
902 KAR 3:225 & E
902 KAR 3:230
902 KAR 3:250 & E
902 KAR 8:020
902 KAR 8:030
902 KAR 12:080
902 KAR 20:006
902 KAR 20:126
902 KAR 20:127
902 KAR 20:132
902 KAR 20:135
904 KAR 2:140
904 KAR 2:202

The Committee adjourned at 3:05 p. m. until September 21, 1988.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE
Meeting of August 25, 1988

The Interim Joint Committee on Appropriations and Revenue met on August 25, 1988, and submits this report:

The Committee determined that the following administrative regulation does not comply with KRS Chapter 13A or other applicable statutes and attach objections as set forth below:

Revenue Cabinet: Department of Professional and Support Services: Selective Excise Tax Motor Fuels

103 KAR 43:250 (Applications of special fuels tax to the railroad industry.) The proposed regulation would declare that special fuels purchased by a railroad company for use in locomotives or unlicensed vehicles or equipment for nonhighway use are not subject to the special fuels tax, and that such tax is not payable by the selling dealer. House Bill 591, enacted by the 1988 Session of the General Assembly, generally requires the prepayment of the special fuels tax by a special fuels dealer, with a refund to the ultimate consumer for tax paid on fuels consumed in nonhighway use. The Committee approved a motion to attach a statement of objection because the regulation does not comply with statutory authority.

The Committee adjourned at 12:20 p.m. until September 22, 1988.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of September 9, 1988

The Interim Joint Committee on Business Organizations and Professions met on Friday, September 9, 1988, and submits this report:

The Committee determined that the following administrative regulation, as amended by the Administrative Regulation Review Subcommittee, complied with KRS Chapter 13A:

201 KAR 10:050 (Board of Examiners and Registration of Landscape Architects.) Section (4) is amended to read as follows: the words "for each year....since the license expired" before the phrase "with penalty as provided in KRS 323A.100." are deleted.

The Committee deferred the following regulations at the agency's/agencies' request:

201 KAR 8:400 (Board of Dentistry)
201 KAR 8:410 (Board of Dentistry)

The Committee adjourned at 3:30 p.m.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of September 14, 1988

The Interim Joint Committee on State Government met on September 14, 1988, and submits this report:

The Committee determined that the following administrative regulation, as amended September 14, 1988, by the Interim Joint Committee on State Government, complies with KRS Chapter 13A:

101 KAR 1:325 (Initial probationary periods in excess of six months.) The Committee amended the regulation to add the following language at the end of Section 2 (2): "At the time of appointment, the employee's appointing authority shall advise the employee of the period of his initial probation."

The Committee deferred the following regulations at the agency's request:

101 KAR 1:320 (Probationary period.)
101 KAR 1:360 (Appeal procedures.)

The Committee did not raise objections to the emergency regulation which had been filed.

The Committee adjourned at 3:25 p.m. until October 12, 1988.

INTERIM JOINT COMMITTEE ON JUDICIARY CRIMINAL
Meeting of September 13, 1988

The Interim Joint Committee on Judiciary Criminal met on September 13, 1988, and submits this report:

The Committee took no action on the following administrative regulations. Those with an asterisk indicate amendments made at the September 6-7 meeting of the Administrative Regulation Review Subcommittee.

Corrections Cabinet
501 KAR 6:030 (Kentucky State Reformatory.)
501 KAR 6:050 (Luther Luckett Correctional Complex.)
501 KAR 6:060 (Northpoint Training Center.)
501 KAR 6:070 (Kentucky Correctional Institute for Women.)
*501 KAR 6:110 (Roederer Farm Center.)
501 KAR 6:120 (Blackburn Correctional Complex.)
501 KAR 6:130 (Western Kentucky Farm Center.)
501 KAR 6:140 (Bell County Forestry Camp.)

Juvenile Holding Facilities
501 KAR 9:010 (Definitions.)
*501 KAR 9:020 (Administration; management.
501 KAR 9:030 (Fiscal management.)
501 KAR 9:040 (Personnel.)
*501 KAR 9:050 (Physical plant.)
501 KAR 9:060 (Security; control.)
501 KAR 9:070 (Safety; emergency procedures.)
501 KAR 9:080 (Sanitation; hygiene.)
*501 KAR 9:090 (Medical services.)
*501 KAR 9:100 (Food services.)
501 KAR 9:110 (Classification.)
*501 KAR 9:120 (Admission; release.)
501 KAR 9:130 (Juvenile programs; services.)
501 KAR 9:140 (Juvenile rights.)
*501 KAR 9:150 (Hearings, procedures, disposition.)

The Committee did not raise objections to the emergency regulation which had been filed.

The Committee adjourned until October 11, 1988.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates.....D2

KRS Index.....D8

Subject Index to Volume 14.....D14

LOCATOR INDEX -- EFFECTIVE DATES

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

VOLUME 14

Regulation	14 Ky.R. Page No.	Effective Date
702 KAR 7:090		
Amended	1651	
704 KAR 15:080		
Amended	1652	

VOLUME 15

Emergency Regulation	15 Ky.R. Page No.	Effective Date
101 KAR 1:325E	107	6-16-88
Replaced	950	9-14-88
105 KAR 1:010E	108	6-22-88
Replaced	31	8-10-88
106 KAR 1:060E	911	9-14-88
107 KAR 1:050E	3	6-10-88
Replaced	97	8-17-88
201 KAR 8:400E	3	6-13-88
201 KAR 8:410E	4	6-13-88
201 KAR 9:175E	777	7-27-88
201 KAR 10:050E	5	6-2-88
Replaced	950	9-9-88
201 KAR 26:240E		4-14-88
Replaced	250	8-5-88
301 KAR 2:044E	913	8-16-88
301 KAR 2:240E	914	8-16-88
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 1:030E	915	9-14-88
501 KAR 1:040E	918	9-14-88
501 KAR 1:050E	921	9-14-88
501 KAR 6:020E	6	6-14-88
Replaced	951	8-16-88
Resubmitted	922	8-16-88
501 KAR 6:030E	924	9-14-88
501 KAR 6:080E	7	6-14-88
Replaced	41	8-17-88
501 KAR 6:110E	781	7-19-88
Replaced	525	9-13-88
501 KAR 6:130E	8	6-14-88
Replaced	41	8-17-88
501 KAR 6:140E	783	7-19-88
Replaced	530	9-13-88
501 KAR 9:010E	144	6-20-88
Replaced	716	9-13-88
501 KAR 9:020E	145	6-20-88
Replaced	954	9-13-88
501 KAR 9:030E	146	6-20-88
Replaced	719	9-13-88
501 KAR 9:040E	147	6-20-88
Replaced	720	9-13-88
501 KAR 9:050E	147	6-20-88
Replaced	956	9-13-88
501 KAR 9:060E	150	6-20-88
Replaced	725	9-13-88
501 KAR 9:070E	151	6-20-88
Replaced	726	9-13-88
501 KAR 9:080E	152	6-20-88
Replaced	727	9-13-88
501 KAR 9:090E	153	6-20-88
Replaced	958	9-13-88
501 KAR 9:100E	154	6-20-88
Replaced	959	9-13-88
501 KAR 9:110E	154	6-20-88
Replaced	731	9-13-88
501 KAR 9:120E	155	6-20-88
Replaced	959	9-13-88
501 KAR 9:130E	156	6-20-88
Replaced	734	9-13-88
501 KAR 9:140E	156	6-20-88
Replaced	735	9-13-88
501 KAR 9:150E	158	6-20-88
Replaced	960	9-13-88
600 KAR 1:080E	161	7-1-88
Replaced	44	9-2-88
600 KAR 2:020E	161	7-1-88
601 KAR 1:005E	9	6-1-88
Withdrawn		8-15-88
Resubmitted	785	8-15-88
601 KAR 13:020E	162	7-15-88
603 KAR 5:072E	11	6-14-88
Replaced	806	9-2-88
705 KAR 5:140E	164	7-15-88
707 KAR 1:110E	165	7-15-88
Withdrawn		7-25-88
Resubmitted	787	7-25-88
803 KAR 25:011E		4-19-88
Replaced	250	8-5-88
803 KAR 25:025E	791	7-25-88
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 2:110E	794	7-15-88
902 KAR 2:120E	794	7-15-88
902 KAR 3:060E	177	6-20-88
Replaced	54	8-31-88
902 KAR 3:075E	178	6-20-88
Replaced	57	8-31-88
902 KAR 3:115E	179	6-20-88
Replaced	60	8-31-88
902 KAR 3:205E	181	6-20-88
Replaced	62	8-31-88
902 KAR 3:210E	182	7-1-88
Replaced	63	8-31-88
902 KAR 3:225E	184	6-20-88
Replaced	66	8-31-88
902 KAR 3:250E	185	6-20-88
Replaced	69	8-31-88

Emergency Regulation	15 Ky.R. Page No.	Effective Date
902 KAR 4:050E	926	9-15-88
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
Expired		9-7-88
902 KAR 20:016E	926	9-15-88
902 KAR 45:120E		4-15-88
Replaced	258	8-3-88
902 KAR 50:120E	214	7-15-88
903 KAR 5:260E	11	5-20-88
Replaced		8-5-88
903 KAR 5:270E	218	6-20-88
Replaced	93	8-5-88
904 KAR 2:016E	219	7-1-88
Withdrawn		8-9-88
Resubmitted	795	8-11-88
904 KAR 2:022E	800	7-25-88
904 KAR 2:116E	224	7-13-88
904 KAR 3:060E	937	9-14-88
906 KAR 1:040E	804	7-15-88
907 KAR 1:004E	227	7-1-88
907 KAR 1:008E	233	7-1-88
907 KAR 1:013E	233	7-1-88
Expired		8-30-88
Resubmitted	939	8-30-88
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
Expired		8-30-88
Resubmitted	942	8-30-88
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
11 KAR 3:060	880	
11 KAR 5:110	884	
12 KAR 5:010		
Amended	1118	
12 KAR 5:020		
Amended	1118	
12 KAR 5:030		
Amended	1120	
12 KAR 5:040		
Amended	1122	
12 KAR 5:050		
Amended	1123	
12 KAR 5:060		
Amended	1124	
12 KAR 5:070		
Amended	1125	
101 KAR 1:320		
Amended	264	
101 KAR 1:325		
Amended	266	
As Amended	950	9-14-88
101 KAR 1:360		
Amended	267	
101 KAR 2:030		
Amended	819	
101 KAR 2:090		
Amended	822	
101 KAR 2:100		
Amended	824	
101 KAR 2:110		
Amended	829	
101 KAR 2:120		
Amended	830	
101 KAR 2:140	886	
101 KAR 2:150	888	
101 KAR 2:160	889	
101 KAR 3:010		
Amended	833	
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	8-25-88
103 KAR 43:260	96 *(No eff. date)	
*Since statement of consideration was not received by 15th day following hearing, regulation must be refiled (KRS 13A.280)		
103 KAR 43:270	890	
105 KAR 1:010		
Amended	31	8-10-88
106 KAR 1:060	1182	
107 KAR 1:050	97	8-17-88
200 KAR 3:045		
Amended	1126	
201 KAR 2:130		
Amended	837	
201 KAR 8:400	99	
201 KAR 8:410	99	
201 KAR 9:083		
Repealed	777	7-27-88
201 KAR 9:175	891	
201 KAR 10:050		
Amended	33	
As Amended	950	9-9-88
201 KAR 20:161		
Amended	838	
201 KAR 22:040		
Amended	1128	
201 KAR 22:110		
Amended	1129	
201 KAR 26:240		
As Amended	250	8-5-88
301 KAR 1:085		
Amended	1130	
301 KAR 1:146	1184	
301 KAR 1:150		
Amended	1131	
301 KAR 1:200		
Amended	1132	
301 KAR 2:044		
Amended	840	
301 KAR 2:140		
Amended	1134	
301 KAR 2:220		
Amended	1136	
301 KAR 2:240		
Amended	842	
301 KAR 3:021		
Amended	1142	
301 KAR 4:070	895	
301 KAR 4:080	898	
302 KAR 15:030		
Amended	843	

Regulation	15 Ky.R. Page No.	Effective Date
302 KAR 16:010		
Amended	845	
302 KAR 20:056		
Amended	275	
306 KAR 2:010	692	
307 KAR 1:010		
Amended	276	
401 KAR 4:100		
Amended	281	
Amended	991	
401 KAR 4:110	693	
Amended	991	
401 KAR 4:120	695	
Amended	993	
401 KAR 4:130	703	
Amended	998	
401 KAR 4:140	706	
Amended	1000	
401 KAR 5:005		
Amended	282	
Amended	1005	
401 KAR 5:010		
Amended	285	
Amended	1007	
401 KAR 5:085		
Amended	289	
Amended	1010	
401 KAR 6:015		
Amended	292	
Amended	1012	
401 KAR 6:030		
Implied repeal		7-15-88
401 KAR 6:040		
Amended	309	
Amended	1028	
401 KAR 6:300		
Amended	314	
Amended	1032	
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	
Amended	1033	
401 KAR 39:030		
Amended	369	
Amended	1033	
401 KAR 39:060		
Amended	371	
Amended	1034	
401 KAR 39:070		
Amended	372	
Amended	1034	
401 KAR 39:080		
Amended	374	
401 KAR 39:090		
Amended	375	
Amended	1035	
401 KAR 39:110	713	
401 KAR 39:120	715	
Amended	1036	
401 KAR 47:060		
Amended	377	
Amended	1037	
401 KAR 50:015		
Amended	379	
401 KAR 50:036		
Amended	384	
Amended	1038	
405 KAR 7:015		
Amended	390	
405 KAR 7:020		
Amended	392	
Amended	1041	
405 KAR 7:030		
Amended	402	
405 KAR 7:090		
Amended	404	
Amended	1049	
405 KAR 8:010		
Amended	414	
Amended	1057	
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	
Amended	1070	
405 KAR 10:040		
Amended	447	
405 KAR 10:050		
Amended	451	
Amended	1073	
405 KAR 16:010		
Amended	453	
405 KAR 16:070		
Amended	455	
405 KAR 16:080		
Amended	457	
Amended	1074	
405 KAR 16:100		
Amended	460	
Amended	1076	
405 KAR 16:110		
Amended	464	
Amended	1078	
405 KAR 16:120		
Amended	466	
405 KAR 16:150		
Amended	471	
405 KAR 16:190		
Amended	473	
Amended	1080	
405 KAR 18:010		
Amended	478	
405 KAR 18:070		
Amended	480	
405 KAR 18:080		
Amended	482	
Amended	1083	

Regulation	15 Ky.R. Page No.	Effective Date
405 KAR 18:100		
Amended	485	
Amended	1085	
405 KAR 18:110		
Amended	489	
Amended	1088	
405 KAR 18:120		
Amended	491	
405 KAR 18:150		
Amended	496	
405 KAR 18:190		
Amended	498	
Amended	1089	
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 1:011		
Repealed	915	9-14-88
501 KAR 1:015		
Repealed	921	9-14-88
501 KAR 1:020		
Repealed	918	9-14-88
501 KAR 1:030	1186	
501 KAR 1:040	1190	
501 KAR 1:050	1193	
501 KAR 6:020		
Amended	34	
As Amended	951	8-17-88
Amended	846	
Amended	1145	
501 KAR 6:030		
Amended	518	9-13-88
Amended	1147	
501 KAR 6:040		
Amended	36	8-17-88
501 KAR 6:050		
Amended	520	9-13-88
501 KAR 6:060		
Amended	37	8-17-88
Amended	522	9-13-88
Amended	1149	
501 KAR 6:070		
As Amended	14	7-1-88
Amended	39	8-17-88
Amended	523	9-13-88
501 KAR 6:080		
Amended	41	8-17-88
501 KAR 6:110		
Amended	525	
As Amended	952	9-13-88
501 KAR 6:120		
Amended	527	9-13-88
501 KAR 6:130		
Amended	41	8-17-88
Amended	529	9-13-88
Amended	1151	
501 KAR 6:140		
Amended	42	8-17-88
Amended	530	9-13-88
501 KAR 9:010	716	9-13-88
501 KAR 9:020	717	
As Amended	954	9-13-88
501 KAR 9:030	719	9-13-88
501 KAR 9:040	720	9-13-88
501 KAR 9:050	722	
As Amended	956	9-13-88
501 KAR 9:060	725	9-13-88
501 KAR 9:070	726	9-13-88
501 KAR 9:080	727	9-13-88
501 KAR 9:090	729	
As Amended	958	9-13-88
501 KAR 9:100	730	
As Amended	959	9-13-88
501 KAR 9:110	731	9-13-88
501 KAR 9:120	732	
As Amended	959	9-13-88
501 KAR 9:130	734	9-13-88
501 KAR 9:140	735	9-13-88
501 KAR 9:150	737	
As Amended	960	9-13-88
600 KAR 1:080		
Amended	44	9-2-88
600 KAR 2:020		
Amended	532	
600 KAR 3:010		
Amended	1152	
600 KAR 4:010		
Amended	534	
601 KAR 1:005		
Amended	45	
Amended	816	
601 KAR 1:025		
Amended	538	
601 KAR 9:090		
Amended	540	
601 KAR 9:110		
Repealed	161	7-1-88
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	
As Amended	963	
603 KAR 5:072	101	
As Amended	806	9-2-88
603 KAR 5:115		
Amended	551	
Amended	1092	
603 KAR 5:200		
Repealed	161	7-1-88
603 KAR 8:010		
Amended	848	
702 KAR 7:065		
Amended	1153	
704 KAR 5:060	1194	
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	

Regulation	15 Ky.R. Page No.	Effective Date
704 KAR 20:150		
Amended	563	
704 KAR 20:240		
Amended	564	
Amended	1092	
704 KAR 20:460		
Amended	565	
Amended	1093	
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	
706 KAR 1:050	1194	
707 KAR 1:051		
Amended	569	
Amended	1094	
707 KAR 1:060		
Amended	580	
707 KAR 1:080		
Amended	581	
707 KAR 1:110		
Amended	582	
Amended	1104	
803 KAR 2:020		
Amended	47	
As Amended	806	8-5-88
803 KAR 25:010		
Repealed	250	8-5-88
803 KAR 25:011		
Amended	19	
As Amended	250	8-5-88
803 KAR 25:025		
Amended	850	
803 KAR 25:080	745	
Amended	1108	
806 KAR 3:130	751	
Amended	1113	
806 KAR 3:140	752	
Amended	1113	
806 KAR 4:010	753	
Amended	1113	
806 KAR 12:090		
Amended	260	9-2-88
806 KAR 13:110	755	
806 KAR 20:010		
Amended	262	9-2-88
806 KAR 39:070		
As Amended	15	7-1-88
807 KAR 5:069	900	
810 KAR 1:012		
Amended	1154	
811 KAR 1:035		
Amended	854	
811 KAR 1:055		
Amended	856	
811 KAR 1:180		
Amended	859	
815 KAR 7:020		
Amended	586	
As Amended	966	
815 KAR 10:020		
Amended	591	
Withdrawn		9-1-88
815 KAR 20:060		
Amended	601	
As Amended	970	
815 KAR 20:100		
Amended	603	
As Amended	972	
815 KAR 20:120		
Amended	605	
As Amended	974	
815 KAR 20:191		
Amended	613	
As Amended	981	
901 KAR 5:110	757	
902 KAR 2:110	758	
Amended	1115	
902 KAR 2:120	759	
Amended	1115	
902 KAR 3:060		
Amended	54	8-31-88
902 KAR 3:075		
Amended	57	8-31-88
902 KAR 3:080		
Amended	58	8-31-88
902 KAR 3:115		
Amended	60	8-31-88
902 KAR 3:205		
Amended	62	8-31-88
902 KAR 3:210		
Amended	63	8-31-88
902 KAR 3:225		
Amended	66	8-31-88
902 KAR 3:230		
Amended	67	8-31-88
902 KAR 3:250		
Amended	69	8-31-88
902 KAR 4:050		
Amended	1156	
902 KAR 8:020		
Amended	71	8-31-88
902 KAR 8:030		
Amended	73	8-31-88
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 12:020		
Amended	860	
902 KAR 12:080		
Amended	74	8-31-88
902 KAR 17:010		
Amended	80	
Amended	818	
Withdrawn		9-7-88
902 KAR 20:006		
Amended	82	8-31-88
902 KAR 20:016		
Amended	1157	
902 KAR 20:126		
Amended	88	8-31-88
902 KAR 20:127		
Amended	89	8-31-88
902 KAR 20:132		
Amended	92	8-31-88
902 KAR 20:135		
Amended	93	8-31-88
902 KAR 45:120		
Amended	258	8-3-88
902 KAR 50:120	763	
As Amended	987	
902 KAR 55:015		
Amended	863	
902 KAR 55:025		
Amended	865	

Regulation	15 Ky.R. Page No.	Effective Date
902 KAR 55:030		
Amended	866	
902 KAR 55:035		
Amended	868	
903 KAR 5:100		
Amended	648	
Withdrawn		9-6-88
903 KAR 5:270		
Amended	93	8-5-88
904 KAR 2:016		
Amended	650	
Withdrawn		8-9-88
Amended	869	
904 KAR 2:020		
Amended	656	
904 KAR 2:022		
Amended	875	
904 KAR 2:116		
Amended	658	
904 KAR 2:140		
Amended	94	8-31-88
904 KAR 2:150		
Repealed	102	8-31-88
904 KAR 2:170		
Amended	663	
904 KAR 2:180		
Repealed	102	8-31-88
904 KAR 2:190		
Repealed	102	8-31-88
904 KAR 2:202	102	8-31-88
904 KAR 3:060		
Amended	1169	
904 KAR 3:090		
Repealed	102	8-31-88
905 KAR 7:230		
Amended	27	
As Amended	812	8-8-88
906 KAR 1:040	767	
907 KAR 1:004		
Amended	664	
907 KAR 1:008		
Amended	670	
907 KAR 1:013		
Amended	671	
Withdrawn		8-30-88
Amended	1171	
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	
Withdrawn		8-30-88
Amended	1174	
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.025	101 KAR 2:160
18A.030	101 KAR 2:030
	101 KAR 2:090
	101 KAR 2:100
	101 KAR 2:110
	101 KAR 2:150
	101 KAR 2:160
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.110	101 KAR 2:030
	101 KAR 2:090
	101 KAR 2:100
	101 KAR 2:110
	101 KAR 2:120
	101 KAR 2:140
	101 KAR 2:150
	101 KAR 2:160
18A.111	101 KAR 1:320
	101 KAR 1:325
18A.112	101 KAR 2:110
18A.155	101 KAR 3:010
18A.165	101 KAR 2:030
18A.202	101 KAR 2:120
Chapter 39	106 KAR 1:060
Chapter 42	200 KAR 3:045
42.455	603 KAR 5:115
56.610-56.760	600 KAR 3:010
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 43:270
138.240	103 KAR 43:270
138.270	103 KAR 43:250
	103 KAR 43:270
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
150.010	301 KAR 1:085
	301 KAR 1:146
	301 KAR 1:150
	301 KAR 1:200
	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 2:240
	301 KAR 4:070
	301 KAR 4:080
150.015	301 KAR 2:044
	301 KAR 2:220
150.025	301 KAR 1:085
	301 KAR 1:146
	301 KAR 1:150
	301 KAR 1:200
	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 2:240
	301 KAR 3:021
	301 KAR 4:070
	301 KAR 4:080
150.110	301 KAR 1:085
150.120	301 KAR 1:146
	301 KAR 1:150
150.170	301 KAR 1:085
	301 KAR 1:146
	301 KAR 1:150
	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 2:240
150.175	301 KAR 1:085
	301 KAR 1:146
	301 KAR 1:150
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 3:021
	301 KAR 4:080
150.176	301 KAR 2:140
150.180	301 KAR 1:085
	301 KAR 2:240
	301 KAR 4:070
	301 KAR 4:080
150.183	301 KAR 2:240
	301 KAR 4:070
	301 KAR 4:080
150.190	301 KAR 1:085
150.225	301 KAR 3:021
150.235	301 KAR 2:220
150.237	301 KAR 3:021
150.240	301 KAR 2:220
	301 KAR 3:021
150.275	301 KAR 4:070
150.280	301 KAR 3:021
150.290	301 KAR 3:021
150.300	301 KAR 2:044
	301 KAR 2:240
150.305	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 2:240
	301 KAR 4:070
	301 KAR 4:080
150.320	301 KAR 2:044
	301 KAR 2:140

KRS Section	Regulation
150.330	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 2:240
	301 KAR 4:080
150.340	301 KAR 2:044
	301 KAR 2:220
	301 KAR 2:240
150.360	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 2:240
150.365	301 KAR 2:140
	301 KAR 2:240
	301 KAR 4:070
150.370	301 KAR 2:240
	301 KAR 4:080
150.390	301 KAR 2:140
	301 KAR 2:240
150.399	301 KAR 2:240
150.400	301 KAR 2:240
150.410	301 KAR 2:240
150.411	301 KAR 4:080
150.415	301 KAR 2:240
150.416	301 KAR 2:240
150.417	301 KAR 2:240
150.445	301 KAR 1:146
	301 KAR 1:150
150.450	301 KAR 1:146
	301 KAR 1:150
150.460	301 KAR 4:070
150.470	301 KAR 1:200
150.510	301 KAR 1:085
150.520	301 KAR 1:085
150.525	301 KAR 1:085
	301 KAR 3:021
150.600	301 KAR 2:220
150.603	301 KAR 2:044
	301 KAR 2:220
150.630	301 KAR 2:220
150.660	301 KAR 3:021
150.990	301 KAR 1:085
	301 KAR 1:146
	301 KAR 1:150
	301 KAR 1:200
	301 KAR 2:220
	301 KAR 3:021
	301 KAR 4:070
	301 KAR 4:080
150.993	301 KAR 2:140
Chapter 152	306 KAR 2:010
156.031	705 KAR 4:010
156.035	707 KAR 1:060
	707 KAR 1:080
156.070	702 KAR 7:065
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
159.010	704 KAR 5:060
159.020	704 KAR 5:060
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

KRS Section	Regulation
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 20:490
	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
163.140	706 KAR 1:050
163.160	706 KAR 1:050
164.740-164.766	11 KAR 3:060
	11 KAR 5:110
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
	603 KAR 8:010
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
	904 KAR 3:060
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

KRS Section	Regulation
Chapter 197 (cont'd)	501 KAR 6:080
	501 KAR 6:110
	501 KAR 6:120
	501 KAR 6:130
	501 KAR 6:140
Chapter 198	815 KAR 7:020
198B.040	815 KAR 20:100
198B.050	815 KAR 20:100
Chapter 202A	902 KAR 12:020
Chapter 202B	902 KAR 12:020
Chapter 205	904 KAR 2:020
	904 KAR 2:022
	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
	902 KAR 4:050
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
214.185	902 KAR 4:050
216B.010–216B.130	902 KAR 20:016
	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.107	902 KAR 20:016
216B.990	902 KAR 20:006
	902 KAR 20:016
	902 KAR 20:126
	902 KAR 20:127
	902 KAR 20:132
	902 KAR 20:135
Chapter 217	201 KAR 2:130
Chapter 217C	902 KAR 50:120

KRS Section	Regulation
Chapter 218A	902 KAR 55:015
	902 KAR 55:025
	902 KAR 55:030
	902 KAR 55:035
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

KRS Section	Regulation
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
	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
230.210-230.360	810 KAR 1:012
230.630	811 KAR 1:035
	811 KAR 1:055
	811 KAR 1:180
230.640	811 KAR 1:035
	811 KAR 1:055
	811 KAR 1:180
230.700	811 KAR 1:180
230.710	811 KAR 1:180
246.250	302 KAR 15:030
247.232	302 KAR 16:010
247.234	302 KAR 16:010
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
260.775-260.845	12 KAR 5:010
	12 KAR 5:020
	12 KAR 5:030
	12 KAR 5:040
	12 KAR 5:050
	12 KAR 5:060
	12 KAR 5:070
260.992	12 KAR 5:010
	12 KAR 5:020
	12 KAR 5:030
	12 KAR 5:040
	12 KAR 5:050
	12 KAR 5:060
	12 KAR 5:070
Chapter 278	807 KAR 5:069
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
304.12-235	806 KAR 12:090
304.13-051	806 KAR 13:110
311.241-311.247	902 KAR 20:016
311.530-311.620	201 KAR 9:175
311.990	201 KAR 9:175
	902 KAR 20:016
313.150	201 KAR 8:400
313.160	201 KAR 8:410
314.011	201 KAR 20:161
314.031	201 KAR 20:161
314.041	201 KAR 20:161
314.042	201 KAR 20:161
314.051	201 KAR 20:161
314.071	201 KAR 20:161
314.073	201 KAR 20:161
314.091	201 KAR 20:161
314.991	201 KAR 20:161
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
327.040	201 KAR 22:116
327.050	201 KAR 22:040
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
342.350	803 KAR 25:025
342.640	101 KAR 2:140
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
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

KRS Section	Regulation
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
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

KRS Section	Regulation
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 2:022
	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
439.315	501 KAR 1:040
439.330	501 KAR 1:040
439.340	501 KAR 1:030
439.341	501 KAR 1:040
439.352	501 KAR 1:050
439.356	501 KAR 1:050
439.358	501 KAR 1:050
439.390	501 KAR 1:040
439.430	501 KAR 1:040
439.440	501 KAR 1:040
Chapter 441	501 KAR 9:150

KRS Section	Regulation
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
HB 516, 1988 GA	603 KAR 8:010
1988 Acts, c. 437	902 KAR 3:210
7 CFR 270-280	904 KAR 3:060
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
	904 KAR 2:022
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
29 U.S.C. 722	706 KAR 1:050
P.L. 97-35	904 KAR 2:116

SUBJECT INDEX

ADMINISTRATIVE, FINANCE (EDUCATION)
School Terms, Attendance and Operation
Agent, high school interscholastic athletics; 702 KAR 7:065

AGRICULTURE
Amusement rides; 302 KAR Chapter 16
Fairs and shows; 302 KAR Chapter 15
Livestock sanitation; 302 KAR Chapter 20

AGRICULTURE EXPERIMENT STATION
Milk and Cream
Farm bulk tanks; 12 KAR 5:060
Inspections; 12 KAR 5:050
Licenses; 12 KAR 5:010
Payment, uniform standards; 12 KAR 5:070
Sampling, weighing; 12 KAR 5:040
Test samples; 12 KAR 5:030
Testing; 12 KAR 5:020

AIR QUALITY
Administrative Procedures
Permit, exemption fees; 401 KAR 50:036
Reference material; 401 KAR 50:015

AMUSEMENT RIDES
Permit procedure; 302 KAR 16:010

ARCHITECTS
(See Landscape Architects)

BUILDINGS, GROUNDS, STATE-OWNED
(See Finance, Administration)

BUSES
Annual inspection; 603 KAR 5:072 & E

CERTIFICATE OF NEED
(See Health Services, Health Economics Control)

CHILD, MATERNAL HEALTH
(See Health Services; Maternal, Child Health)

CHILDREN'S RESIDENTIAL SERVICES
(See Social Services)

COMMUNICABLE DISEASES
(See Health Services)

CONTROLLED SUBSTANCES
(See Health Services or Pharmacy)

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

CORRECTIONS (cont'd)
Policies and Procedures
Bell County Forestry Camp; 501 KAR 6:140 & E
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 & E
Luther Luckett Correctional Complex; 501 KAR 6:050
Northpoint Training Center; 501 KAR 6:060
Roederer Farm Center; 501 KAR 6:110 & E
State Penitentiary; 501 KAR 6:040
Western Kentucky Farm Center; 501 KAR 6:130 & E

CREAM
(See Agriculture Experiment Station)

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

DISASTER, EMERGENCY SERVICES
(See Military Affairs)

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
Administration, Finance
School terms, attendance, operations; 702 KAR Chapter 7
Exceptional Children
Exceptional, handicapped; 707 KAR Chapter 1
Instruction
Kindergartens, nursery schools; 704 KAR Chapter 5
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
Vocational Rehabilitation
Administration; 706 KAR Chapter 1

EMPLOYEES, STATE
(See also Personnel)
Personnel Rules
Board; 101 KAR Chapter 1
Classified; 101 KAR Chapter 2
Unclassified; 101 KAR Chapter 3
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

FAIRS, SHOWS
Beef cattle shows, sales; 302 KAR 15:030

FINANCE, ADMINISTRATION
State Owned Buildings and Grouds
  Mansion monthly meal charges; 200 KAR 3:045

FISH, WILDLIFE RESOURCES
Fish
  Angling seasons, limits; 301 KAR 1:200
  Commercial fishing gear; 301 KAR 1:146
  Commercial fishing waters; 301 KAR 1:150
  Mussel shell harvesting; 301 KAR 1:085
Game
  Bobcat harvest season; 301 KAR 2:240 & E
  Migratory bird seasons; 301 KAR 2:220
  Migratory wildlife taking; 301 KAR 2:044 & E
  Wild turkey seasons; 301 KAR 2:140
Hunting, Fishing
  License fees; 301 KAR 3:021
Wildlife
  Nuisance wildlife control; 301 KAR 4:070
  Taxidermy requirements; 301 KAR 4:080

HARNESS RACING COMMISSION
Harness Racing Rules
  Claiming races; 811 KAR 1:035
  Declaration to start; 811 KAR 1:055
  Licensed personnel, fees; 811 KAR 1:180

HEALTH BOARDS, LOCAL
(See Health Services)

HEALTH PLAN, STATE
(See Health Services)

HEALTH SERVICES
Communicable Diseases
  Blood-transmissible; 902 KAR 2:110 & E
  Blood donor forms; 902 KAR 2:120 & E
Controlled Substances
  Schedule I; 902 KAR 55:015
  Schedule III; 902 KAR 55:025
  Schedule IV; 902 KAR 55:030
  Schedule V; 902 KAR 55:035
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
  Hospitals operation, services; 902 KAR 20:016 & E
  Licensure hearings; 902 KAR 20:126
Local Boards of Health
  Merit system; 902 KAR 8:030
  Policies, procedures; 902 KAR 8:020
Maternal, Child Health
  Family planning program; 902 KAR 4:050 & E
Mental Health, Mental Retardation
  Facility policies, procedures; 902 KAR 12:080
  Patient's rights; 902 KAR 12:020
Milk, Milk Products
  Unpasteurized goat milk; 902 KAR 50:120 & E
State Health Plan
  Plan; 902 KAR 17:010 & E
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

HEALTH SERVICES (cont'd)
  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

HIGHER EDUCATION ASSISTANCE AUTHORITY
Loan Program
  Loan insurance program; 11 KAR 3:060
KHEAA Grant Programs
  Dual enrollment, consortium agreement; 11 KAR 5:110

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
Scholarship program; 603 KAR 8:010

HOSPITALS
(See Health Services)

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
  Maternal, child health; 902 KAR Chapter 4
  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 (HUMAN RESOURCES)
Blood establishment licensure; 906 KAR 1:040 & E

INSTRUCTION (Education)
Kindergartens, Nursery Schools
  Compulsory attendance, 5 year olds; 704 KAR 5:060
Teacher Certification
  Communication disorders; 704 KAR 20:500
  Emergency certification; 704 KAR 20:120
  Exceptional children recruitment plan; 704 KAR 20:510

INSTRUCTION (Education) (cont'd)
Librarians; 704 KAR 20:145; 704 KAR 20:146; 704 KAR 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

MATERNAL, CHILD HEALTH
(See Health Services)

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

MEDICAL LICENSURE
Physician assistants; 201 KAR 9:175 & E

MENTAL HEALTH, MENTAL RETARDATION SERVICES
(See Health Services)

MILITARY AFFAIRS
Rescue squad regulations; 106 KAR 1:060 and E

MILK, MILK PRODUCTS
(See Health Services)
(Also see Agriculture Experiment Station)

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

NURSING
Compliants; 201 KAR 20:161

OCCUPATIONAL SAFETY, HEALTH
29 CFR Part 1910; 803 KAR 2:020

OCCUPATIONS, PROFESSIONS
Dentistry; 201 KAR Chapter 8
Landscape architects; 201 KAR Chapter 10
Medical licensure; 201 KAR Chapter 9
Nursing; 201 KAR Chapter 20
Pharmacy; 201 KAR Chapter 2
Physical therapy; 201 KAR Chapter 22

PAROLE BOARD
Parole eligibility; 501 KAR 1:030 & E
Parole final discharge; 501 KAR 1:050 & E
Parole revocation hearings; 501 KAR 1:040 & E

PERSONNEL
(See also Employees, State)
Board
Appeal procedures; 101 KAR 1:360
Probationary period; 101 KAR 1:320; 101 KAR 1:325 & E
Classified
Compensation plan; 101 KAR 2:030
Employee assistance program; 101 KAR 2:160
Employee evaluation plan; 101 KAR 2:110
Incentive program; 101 KAR 2:120
Leave; 101 KAR 2:100
Service; 101 KAR 2:090
State safety program; 101 KAR 2:150
Workers comp fund, program; 101 KAR 2:140
Unclassified
Leave; 101 KAR 3:010

PHARMACY
Schedule I, II controlled substances; 201 KAR 2:130

PHYSICAL THERAPY
Assistant's certification renewal; 201 KAR 22:110
License renewal; 201 KAR 22:040

PROPERTY ACQUISITION, RELOCATION: TRANSPORTATION
Relocation assistance payments; 600 KAR 3:010

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
Public Service Commission; 807 KAR Chapter 5
Racing
Harness; 811 KAR Chapter 1
Thoroughbred; 810 KAR Chapter 1

PUBLIC SERVICE COMMISSION
Water district, association construction cases; 807 KAR 5:069

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
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
Food Stamp Program
  Administrative disqualification hearings, penalties; 904 KAR 3:060 & E
Public Assistance
  AFDC standards; 904 KAR 2:016 & E
  Child support; 904 KAR 2:020; 904 KAR 2:022 & E
  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

STATE-OWNED BUILDINGS, GROUNDS
(See Finance, Administration)

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 43:270
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

THOROUGHBRED RACING
Horses; 810 KAR 1:012

TOURISM
Fish and Wildlife Resources
  Fish; 301 KAR Chapter 1
  Game; 301 KAR Chapter 2
  Hunting, fishing; 301 KAR Chapter 3
  Wildlife; 301 KAR Chapter 4

TRANSPORTATION
Administration
  Repealer; 600 KAR 1:080
Highways
  Maintenance; 603 KAR Chapter 3
  Traffic; 603 KAR Chapter 5
  Scholarship program; 603 KAR Chapter 8
Minority Affairs
  Certification of minority enterprises; 600 KAR 4:010 & E
Property Acquisition, Uniform Relocation
  Relocation assistance payments; 600 KAR 3:010
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)

UNIVERSITY OF KENTUCKY
Agriculture Experiment Station
  Milk and cream; 12 KAR Chapter 5

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

VOCATIONAL REHABILITATION
Appeals procedures; 706 KAR 1:050

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
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
Joint self-insurers; 803 KAR 25:025 & E
Procedures; 803 KAR 25:011 & E
Rehabilitation procedures; 803 KAR 25:080 & E