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

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on October 4 & 5, 1989. See **tentative** agenda on pages 529-530 in 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		Office, Division, or Major Function		Specific Regulation

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA
October 4, 1989
(Rm. 107, Capitol Annex @ 1 p.m.)

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200 KAR 5:020. Finance and Administration Cabinet Manual of Policies and Procedures.

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Board for Proprietary Education
201 KAR 24:040. Procedures for Hearings.

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TENTATIVE AGENDA
October 5, 1989
(Rm. 107, Capitol Annex @ 10 a.m.)

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903 KAR 5:320. Fraud disqualifications.
903 KAR 5:330. Release of notice of levy.
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908 KAR 3:080. Policies and procedures of Hazelwood ICF - MR.
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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.

EMERGENCY REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states 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 (6) 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 and 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 21, 1989
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 7 [8] through October 30 [31]; December 1 through December 6.
(2) Woodcock: October 1 through December 4.
(3) Common snipe: October 1 through December 4.
(4) Wood [Experimental September] duck: September 6 [7] through September 10 [11].

Section 2. Limits.

Species	Bag Limits	Possession Limits
Doves	15	30
Woodcock	5	10
Common snipe	8	16
[Experimental September] Wood ducks	[*]2	[*]4

[*Daily bag limit shall be two (2) wood ducks.] 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 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 7 [8] through October 30 [31]; from sunrise to sunset during the period December 1 through December 6.

(2) Common snipe and woodcock: from one-half (1/2) hour before sunrise to sunset.

(3) Wood [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 7 [8] through October 13 [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 7 [8] through October 13 [14] 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 7 [8] through October 13 [14] 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: postwide from September 1 through September 22 and December 1 through December 4. [16, September 17 through October 12] On designated areas only from October 7 through October 30. [November 24 through December 9; December 10 through December 11 on designated areas only as announced by Fort Campbell Hunting and Fishing Unit.]

(b) Woodcock [and snipe]: postwide from November 23 [24] through December 8 and January 4 through January 29. On designated areas only from December 9 through December 31 [4].

(c) Snipe: postwide from September 1 through September 22, November 23 through December 8 and January 4 through January 29. On designated areas only from December 9 through December 31.

(d) [(c)] September wood duck: September 6 [7] through 10 [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 west of KY 1496 and east of the area formed by the line created by Bruin Creek and that section of the Little Sandy River [and on Bruin Creek portions of] (Grayson Lake) extending north from the confluence of Bruin Creek; 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 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: August 15, 1989
FILED WITH LRC: August 21, 1989 at 9 a.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 Corrections Cabinet to respond to a grievance from a contract facility to bring inmate pay there in line with cabinet policy, comply with state law requiring the collection of state taxes on goods sold in the inmate canteen, to provide comprehensive legal services for inmates in minimum security, and to bring the cabinet's probation and parole policies in line with the American Correctional Accreditation Standards for Adult Probation and Parole Field Services. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on August 15, 1989 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 21, 1989
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 15 [July 14], 1989 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 (Amended 8/15/89)
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 (Amended 8/15/89)
2.2 Warden's Fund [(Amended 7/14/89)]
2.10 Surplus Property
3.1 Code of Ethics
3.12 Institutional Staff Housing
4.2 Staff Training and Development
4.3 Firearms and Chemical Agents Training
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
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
13.6 Sex Offender Treatment Program
14.2 Personal Hygiene Items
14.4 Legal Services Program (Amended 8/15/89) [(Amended 7/14/89)]
14.6 Inmate Grievance Procedures
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 [(Amended 7/14/89)]
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
18.6 Classification Document
18.7 Transfers
18.8 Guidelines for Transfers Between Institutions
18.9 Out-of-state Transfers [(Amended 7/14/89)]
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 (Deleted 8/15/89)]
20.6 Vocational Study Release
22.1 Privilege Trips
25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate [(Amended 7/14/89)]
25.3 Prerelease Program (Amended 8/15/89)
25.4 Inmate Furloughs
25.6 Community Center Program
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
27-08-01 Use of Force (Added 8/15/89)
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision
27-11-01 Intensive Supervision
27-12-01 Supervision: Case Classification (Amended 8/15/89)
27-12-02 Risk/Needs Assessment
27-12-03 Initial Interview (Amended 8/15/89) [(Amended 7/14/89)]
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 (Amended 8/15/89)
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01	Absconder Procedures (Amended 8/15/89)
27-18-01	Probation and Parole Issuance of Detainer/Warrant
27-19-01	Preliminary Revocation Hearing (Amended 8/15/89)
27-20-01	Division of Probation and Parole Controlled Intake Program
27-20-02	Prisoner Intake Notification
27-20-03	Prisoner Status Change (Amended 8/15/89)
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) (Amended 8/15/89)
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
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: August 15, 1989
FILED WITH LRC: August 21, 1989 at 9 a.m.

REGULATIONS AS AMENDED BY ADMINISTRATIVE BODY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following regulations were amended by promulgating agency and the Administrative Regulation Review Subcommittee on September 6-7, 1989.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners
(As Amended)

201 KAR 21:075. Peer review procedures and fees.

RELATES TO: KRS 312.200
STATUTORY AUTHORITY: KRS Chapter 13A, 31.200, 312.015, 312.019
NECESSITY AND FUNCTION: KRS 312.010 empowers the Board of Examiners to adopt regulations. KRS 312.200 requires the board to appoint a peer review committee and establish procedures and fees for the review of submitted claims. The function of this regulation is to establish those fees and procedures.

Section 1. Definitions. (1) "Board" means the Kentucky State Board of Chiropractic Examiners.
(2) "Committee" means the peer review committee established by KRS 312.200.
(3) "Accepted standards" for the peer review committee means those standards of care, skill, and treatment which are recognized by a reasonably prudent chiropractor as being acceptable under similar conditions and circumstances.
(4) "Appropriate chiropractic treatment" means a determination made of treatment and other services performed, which by virtue of a substantiated and properly diagnosed condition appears to be a type consistent with that diagnosis as reviewed by the peer review committee.
(5) "Unconscionable fees" means charges or bills for treatment submitted for services performed that are unnecessary or unreasonable charges in the judgment of the peer review committee. In determining the unconscionability of costs, the committee may consider, among other appropriate factors, the usual and customary charges by chiropractors and by health care providers other than chiropractors for the same or similar services in the locality where the complaint originated.
(6) "Bill for treatment" means all services provided to a customer, regardless of the monetary consideration paid to the chiropractor.
(7) "Patient" means an individual who receives treatment from a chiropractor.
[(8) "Peer review" means an evaluation, based on accepted standards, by the peer review committee of the appropriateness, quality, utilization, and cost of health care and health services provided to a patient.]
(8) [(9)] "Properly utilized services" means appropriate treatment services rendered, including frequency and duration, which are substantiated as being necessary and reasonable by clinical records and reports of the provider or any other facts or evidence pertinent to the controversy as reviewed by the peer review committee

Section 2. Procedures. [(1) Peer review shall occur upon submission by a patient, the patient's representative, the treating chiropractor, the insurer or other third party payor seeking peer review regarding the appropriateness, quality or utilization of chiropractic services or bills for treatment.]
(1) [(2)] Before peer review can take place, the patient shall execute a release permitting photocopies of the applicable treatment or billing records prepared by the chiropractor in the regular course of business. No treatment records shall be released for peer review without the patient's authorization. The acceptance of, or the request for, payment by a chiropractor constitutes the consent of the chiropractor to the submission of all necessary records and other information concerning the treatment or its cost to the peer review committee. Six (6) copies of all records or other data shall be submitted to the committee.
(2) [(3)] Each claim shall be assigned to an individual member of the committee who shall review the submitted records and response from the charged party and report his findings to the full committee, which shall review the findings and either adopt those findings or modify them as deemed appropriate by majority vote. Copies of the findings shall be forwarded to the board, the patient, the chiropractor, insurer or other third party payor.
(3) [(4)] The peer review committee shall elect [from the membership] a chairman. The committee may recommend for the board's [, subject to] approval a [by the board, may] contract with or employment of [employ] third parties to perform administrative functions or to aid in obtaining records necessary for appropriate review of claims.
(4) [(5)] The peer review committee shall recommend to the board that [file] a complaint be filed against any chiropractor if it appears from the review of any claim that reasonable cause exists to believe that the chiropractor has violated any portion of KRS Chapter 312 or the regulations adopted pursuant thereto for which a chiropractor may be disciplined. The peer review committee shall transmit all complaint information it possesses to the board.
(5) [(6)] A chiropractor, insurer or other third party payor [Any party] requesting review shall submit with the request a service fee of fifty (50) dollars payable to "B.C.E. Peer Review." An additional fee shall be charged for claims requiring more than one (1) hour of review by the committee calculated at fifty (50) dollars per hour, which sum shall be due prior to the delivery of committee findings to all parties. All fees shall be paid by the chiropractor, insurer or other third party payor [party] requesting the review.

Section 3. Annual Report. An annual summary of the findings of the peer review committee shall be prepared by the committee and submitted to the board. The report may be made available to interested persons upon request and upon payment of the cost [necessary administrative costs to defray the expenses] of reproduction. No report or summary submitted to the public by the board may disclose the name or identity of any patient without the patient's consent.

HAROLD BYERS, D.C., President
APPROVED BY AGENCY: December 1, 1988
FILED WITH LRC: June 15, 1989 at 11 a.m.

JUSTICE CABINET
Department of State Police
(As Amended)

502 KAR 45:010. Definitions.

RELATES TO: KRS 16.040, 16.050
STATUTORY AUTHORITY: KRS 16.050, 16.080
NECESSITY AND FUNCTION: KRS 16.040 and 16.050 provide that the Commissioner of the Kentucky State Police and the State Police Personnel Board may adopt such regulations as necessary to assure appointment of qualified officers to the department. This regulation establishes the definitions to be utilized in the administrative regulations concerning the selection process.

Section 1. As employed in these regulations, unless the context requires otherwise, the following words and phrases have the following meanings:
(1) "Department" means the Department of State Police.
(2) "Commissioner" means the Commissioner of the Department of State Police.
(3) "Board" means the State Police Personnel Board.
(4) "Officer" means any member of the Department of State Police who [has successfully completed the prescribed course of instruction at the State Police Academy and who] possesses the powers of a peace officer.
(5) "Cadet trooper" means any officer employee of the Department of State Police from the time of appointment until successful completion of the course of training at the State Police Academy [and the taking of the oath of office].
(6) "Register" means the official list of persons eligible for appointment to the position of cadet trooper placed in rank order according to approved guidelines.
(7) "Appointment" means selection of a person from the register to be employed as a cadet trooper.
(8) "Candidate" means an applicant for employment who has successfully completed all phases of the selection process and whose name is placed on the register from which appointments will be made.
(9) "Applicant" means a person who has filled out an application for employment as a cadet trooper with the agency.

W. MICHAEL TROOP, Secretary
APPROVED BY AGENCY: June 26, 1989
FILED WITH LRC: June 26, 1989 at 3 p.m.

TRANSPORTATION CABINET
(As Amended)

600 KAR 3:020. Grave relocation.

RELATES TO: KRS Chapters 176, 177, 381, 183.120
STATUTORY AUTHORITY: KRS 176.050,177.020, 183.024
NECESSITY AND FUNCTION: In the course of constructing or reconstructing transportation facilities, cemeteries or graves on occasion need to be relocated. This administrative regulation sets forth the provisions for relocation of cemeteries or graves from state-owned property.

Section 1. Notification of Next-of-kin. The Transportation Cabinet shall make every effort to locate the next-of-kin of those interred in the cemetery to be relocated. If there are unidentified remains or if a next-of-kin cannot be located, the Transportation Cabinet shall publish its intention to relocate graves in the local newspapers. This public notice shall include the name and location of the cemetery to be relocated and shall request assistance from anyone having knowledge of persons buried in the cemetery of their next-of-kin. This notice shall be published once each week for a period of sixty (60) days in all local newspapers that are published at least weekly. If the next-of-kin cannot be located after these efforts, the Transportation Cabinet shall request authorization from the county fiscal court to relocate the grave.

Section 2. Location of Reinterment. Unless the next-of-kin prefers another location or it is economically unfeasible, the remains shall be relocated to the closest perpetually maintained public cemetery. If the next-of-kins selects a cemetery located in another county or out-of-state for the reinterment, he shall pay any additional cost incurred by the Transportation Cabinet.

Section 3. Reserved Spaces in the Cemetery. If a family has reserved space adjoining the deceased in the disinterment cemetery and requests a reserved space adjoining the deceased in the reinterment cemetery, this space shall be provided. The Transportation Cabinet shall attempt to honor other requests for reserved space in the reinterment cemetery from living persons with a reserved space in the disinterment cemetery.

Section 4. Disinterment-reinterment Permit. The Transportation Cabinet shall obtain the Disinterment-reinterment Permit required by 901 KAR 5:090.

Section 5. Contractor Eligibility. Only a person licensed as a funeral director under the provisions of KRS 316.090 shall be eligible to bid as a contractor on a Transportation Cabinet grave relocation project. The Transportation Cabinet shall maintain a list of licensed funeral directors wishing to bid on grave relocation projects. Annually, the cabinet shall advertise statewide for funeral directors interested in providing this service. All qualified respondents as well as funeral directors who have actually relocated graves for the Transportation Cabinet shall be placed on the list. All interested funeral directors shall be required to provide proof of current licensing.

Section 6. Contract Procedures. (1) All funeral directors on the list of those interested in grave relocation and who are located in the county or a county contiguous to the county of the grave relocation project shall be notified of the grave relocation project. In

addition, those funeral directors who have requested to be notified of a grave relocation project within certain parameters shall be notified if those parameters are met. Each shall be provided an opportunity to view the grave to be relocated and the reinterment site. If a funeral director expresses interest in the project, he shall be provided a bid proposal.

(2) All properly completed bid forms received prior to the bidding deadline shall be considered. No bid received or completed after the deadline shall be considered.

(3) The contract shall be awarded to the lowest acceptable bid.

(4) If a funeral director contractor has a contract claim or requests relief from the Transportation Cabinet, the procedures set forth in 603 KAR 2:015 shall be followed.

Section 7. Memorial Service. If a brief memorial or religious service is requested by the deceased's next-of-kin, permission for the service shall be granted. [However, during the disinterment or reinterment of the deceased only the next-of-kin, Transportation Cabinet employees, and funeral director and his employees shall be present.]

B. G. BODNER, Executive Director
O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: May 15, 1989
FILED WITH LRC: June 16, 1989 at 9 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(As Amended)

702 KAR 1:115. Annual in-service training of district board members.

RELATES TO: KRS 160.180
STATUTORY AUTHORITY: KRS 156.070, 160.180
NECESSITY AND FUNCTION: KRS 160.180 provides that all local school board members must complete an established number of hours of in-service training annually, based on the number of years of experience, and that the State Board for Elementary and Secondary [of] Education shall identify the criteria for fulfilling such requirements. This regulation establishes standards for the annual in-service training of district board members.

Section 1. The annual in-service requirements for all district school board members shall be, for all calendar years after 1989 [1987], as follows:

(1) Twelve (12) hours training for school board members with zero to three (3) years of experience.

(2) Eight (8) hours training for school board members with four (4) to seven (7) years of experience.

(3) Four (4) hours training for school board members with eight (8) or more years of experience.

(4)(a) Newly appointed or elected school board members who take office after June 30th of a particular year shall be entitled, upon appropriate request, to an extension of time under Section 5 of this regulation within which to acquire a maximum number of unacquired hours equal to the difference between the required number of hours and one (1) hour per month for each full month actually served during the year, and such extensions may extend no longer than through the remainder of the term being served or the next two (2) calendar years, whichever is longer.

(b) Newly appointed or elected members who take office prior to July 1, but on or after March 1, of a particular year may be granted an extension of time under Section 5 of this regulation, in appropriate cases and for an appropriate period of time not to exceed two (2) calendar years, within which to obtain the balance of any required, but unacquired in-service hours for the initial year of new service. Any such extension to acquire hours shall not exceed the difference between the required number of hours and one (1) hour per month for each full month actually served during the year.

Section 2. [Except as specifically provided for in Section 3(2)(b) of this regulation,] The topics relating to the responsibilities of board members may include but not be limited to the following subjects:

(1) The basic role and responsibility of the district board and its members;
(2) Instructional programs;
(3) District finance;
(4) Relations with superintendent and staff;
(5) School law; and
(6) Community relations.

Section 3. (1)(a) For calendar years after 1989 [1987], the Kentucky School Boards Association (KSBA) is recognized as the provider of eight (8) hours of district board member in-service training for board members who are required to obtain twelve (12) hours annually. This arrangement equates to the KSBA being the provider of thirty-two (32) of the forty-eight (48) hours required during the four (4) year period for new board members.

(b) New, inexperienced board members shall [should] be exposed to basic information and [basic] skills that make them informed and effective board members. Topics that new, inexperienced board members shall acquire hours in shall be offered annually by KSBA from the following list of topics: [During the zero to three (3) year experience period, district board members initially elected in 1986, or initially elected thereafter, shall be required to acquire a minimum of two (2) hours training in each of the following areas through programs offered by the KSBA:]

1. School law;
2. School finance;
3. Community relations;
4. Policy development;
5. Personnel relations;
6. Instructional programs;
7. Superintendent/board relations;
8. Goal setting/decision making;
9. Employment and evaluation of the superintendent;
10. Educational services provided for the exceptional, gifted and other special population children; and

[11. The increasing problems of drug and alcohol use among our young people.]

(c) KSBA shall offer hours in at least seven (7) of the ten (10) topics listed in paragraph

(b) of this subsection annually. No topic shall be made available less frequently than once in every twenty-four (24) month period.

(d) [(c)] Board members in the zero to three (3) year experience period shall [will] be allowed a maximum of four (4) hours per year, or sixteen (16) hours for the four (4) year period, as flexible hours of in-service. If board members in this category opt to get all of their hours through the KSBA, then they may [can] have KSBA credit them for these hours. If they determine to acquire a portion or all of the sixteen (16) flexible hours through sources other than KSBA, then they shall [must] get credit through their own school board's action at a board meeting, and a copy of that record shall [must] be sent to KSBA so that proper credit can be given.

(2) Those district board members in the four (4) to seven (7) years experience category may [can] acquire their hours anywhere, through any source they desire. If they obtain their hours through any source other than the KSBA, they must have local board approval and send a copy of the record (board minutes) to KSBA.

(3) Those board members in the eight (8) or more years experience category are subject to subsection (2) of this section.

(4) As the approved provider, the KSBA [Kentucky School Boards Association] shall, in cooperation with the Superintendent of Public Instruction, annually develop an in-service training plan for the review and approval of the State Board for Elementary and Secondary [of] Education. In-service training for district board members shall be provided at a minimum of five (5) geographic locations, on a variety of dates.

(5) The local district board of education shall by board action certify completion of all qualifying flexible hours of in-service training in writing to KSBA, which shall combine such hours with hours of in-service training received through its approved activities. The certification to KSBA shall include a description of the time, date, location, and description of the in-service training. These records shall be submitted annually to the State Board for Elementary and Secondary [of] Education.

Section 4. Subject to extensions granted under Section 5 of this regulation, the names of all district school board members who fail to complete the required hours of in-service training shall be transmitted by the Department of Education to the Attorney General.

Section 5. The State Board for Elementary and Secondary [of] Education, in cases of emergency, may grant an extension of time within which a local board member may complete the required hours of in-service training. Such extensions may include true emergencies for board members serving less than a full year, based upon reasons other than merely less than a full year's service.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(As Amended)

702 KAR 5:010. Responsibilities of division.

RELATES TO: KRS 156.160, 189.540
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 and 189.540 require the State Board for Elementary and Secondary [of] Education to promulgate regulations relating to the safety of public school children, the transportation of such children to and from school, and the operation of school buses. This regulation establishes guidelines and procedures whereby the Division of Pupil Transportation may [will be enabled and empowered to] offer direct assistance to the school districts in these areas: service to the pupils, school bus safety, and economy of operation.

Section 1. The Division of Pupil Transportation shall make the calculations for pupil transportation allotment purposes under the Minimum Foundation Program that are necessary to determine the calculated pupil transportation program cost for each district that provides transportation for its pupils.

Section 2. The Division of Pupil Transportation shall be responsible for the development of a standardized school bus driver training curriculum, meeting the standards of 702 KAR 5:080, Sections 8, 9, and 10, [for approval by the State Board of Education,] and shall keep the curriculum up-to-date by revision when experience indicates updating is necessary. The division shall be responsible for training and certifying instructors of the training curriculum.

Section 3. No person shall be certified to teach the school bus driver training curriculum until he or she has satisfactorily completed a minimum of twenty-five (25) [twenty (20)] hours classroom and driving instruction, conducted by the Division of Pupil Transportation and relevant to the approved driver training curriculum, and has been issued an instructor's certificate by the Superintendent of Public Instruction. Instructors shall be required to renew their certificates annually by completing six (6) appropriate hours of update training conducted by the division.

Section 4. The Division of Pupil Transportation personnel shall have the authority at any time to make a safety inspection of any and all school buses and special type vehicles either owned by the board or contracted to the board that are being used to transport pupils to and from school, held in reserve as substitutes for this purpose, or are being proposed for this purpose. If any of these school buses or special type vehicles are found to be in an unsafe condition, personnel of the Division of Pupil Transportation shall have the authority to prohibit their further use for the transportation of pupils until the conditions causing them to be unsafe shall have been corrected.

Section 5. The Division of Pupil

Transportation personnel shall have the authority to prohibit the use of school buses [and/]or special type vehicles used for the transportation of pupils to and from school that have been purchased by boards of education or school bus contractors that were originally manufactured to the specifications of a state other than Kentucky until such school buses shall have been approved by said Division of Pupil Transportation personnel as meeting the minimum safety standards for Kentucky school buses of the same model year.

Section 6. The Division of Pupil Transportation shall have the authority to make a district pupil transportation system survey in any school district that provides transportation for its pupils, or that is planning to provide transportation for its pupils.

Section 7. The Division of Pupil Transportation shall have the authority to require the superintendent of a school district to prepare or cause to be prepared: pupil transportation maps, bus route descriptions, and reports necessary for calculating the district's entitlement under the minimum foundation program and for the purposes of the Division of Pupil Transportation in making a pupil transportation system survey for the district.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.

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

704 KAR 20:070. Provisional high school 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 for Elementary and Secondary [of] Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to a particular certificate on the basis of standards and procedures recommended by the council and approved by the state board. This regulation establishes an appropriate certificate for teaching in the secondary grades and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005.

Section 1. (1) The provisional high school certificate shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary [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 40.0, 40.1, 40.2, and 40.3.

(2) The provisional high school certificate shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045. [Effective until December 31, 1984, the provisional high school certificate 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.]

(3) Except as hereinafter provided, the provisional high school certificate shall be valid for teaching in grades seven (7) through twelve (12).

(4) [Effective September 1, 1989,] The certificate described in this regulation shall be renamed the provisional certificate for teaching in the secondary grades 9-12, and this new certificate shall be valid only for teaching in grades nine (9) through twelve (12) and for a departmentalized assignment in grades seven (7) and eight (8) in the major, minor, or area of concentration designated on the teaching certificate.

[(5) Effective January 1, 1985, the provisional high school certificate shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045.]

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Adult and Community Education
(As Amended)

709 KAR 1:100. Approval of applications under Section 353 of Adult Education Act.

RELATES TO: KRS 156.032, 156.035, 156.070, PL 100-297
STATUTORY AUTHORITY: KRS 156.032, 156.035, 156.070
NECESSITY AND FUNCTION: KRS 156.032, 156.035, and 156.070 direct the State Board for Adult, Vocational Education and Vocational Rehabilitation to be responsible for, and adopt administrative regulations for, adult education programs and services in Kentucky. This regulation prescribes the policies, activities and procedures for approving local applications for grants of federal funds for adult education special demonstration and teacher training projects under Section 353 of the Adult Education Act.

Section 1. Application, Funding, and Appeal Process. (1) Announcement of availability of funds. In April of each year, the Division of Adult Basic Education shall make an announcement

through the Department of Education's Division of Public Information that funds will be available for special demonstration and teacher training projects, and shall place a similar announcement on KNET, the computer network serving many local school districts. In addition, announcements shall be sent to those who request information about the application process and the availability of funds.

(2) Proposal submission.

(a) All applications shall be submitted to the Kentucky Department of Education. Applicants may be local educational agencies, including local school districts, area vocational schools, technical institutes, or community colleges; other colleges; universities; other public or private agencies or institutions; or individuals. The chief administrative officer of the local educational agency, or an official designee, shall be the person responsible for submitting applications. Each applicant shall submit seven (7) copies of each proposal to the state Superintendent of Public Instruction or a designated representative.

(b) Applications for all special experimental demonstration projects and teacher training projects shall describe the nature, duration, purpose and plan of the projects, including a statement of the problem, a review of related literature or other background information, statement of objectives, procedures, time schedule, qualifications of personnel, facilities to be used, dissemination procedures, and the proposed budget, including a justification of the amount of funds requested and the portion of the cost to be borne by the applicant.

(3) Review of applications. The Superintendent of Public Instruction or the representative designated to review applications shall name a panel of three (3) to five (5) staff members of the Kentucky Department of Education who are knowledgable in the area of adult education. Each panel member shall rate the applications independently according to a rating scale based on the priorities and criteria described in Section 2 of this regulation. The panel shall arrive at a composite score for each application after discussion of the application. The panel shall then recommend to the Superintendent of Public Instruction the proposals to be approved and the amount of funds to be granted. All proposals for which adult education funds are requested are subject to approval by the Superintendent of Public Instruction.

(4) Appeal process. The Superintendent of Public Instruction or the designated representative shall notify the applicant of the disposition of the application, which may be approval, disapproval, deferral, or a request for modification. Deferral or disapproval of an application shall not preclude its reconsideration or resubmission at a later date.

Section 2. Priorities and Criteria. (1) The Kentucky Department of Education shall provide funds for special experimental demonstration projects and teacher training projects as prescribed by the Adult Education Act. In addition, mini-grants shall be available for proposals that target specific local needs. Funds shall not be provided under Section 353 for instructional or support services that would normally be part of a regular program of classroom instruction. These funds also cannot underwrite any activity that requires ongoing funds beyond the special grant period. Mini-grants for innovative or developmental projects shall be restricted to programs of adult basic and secondary instruction funded through the Division of Adult Basic Education. The department may, at its discretion, use Section 353 funds for allowable activities that do not fit into one of the other funding categories. The agency may support activities either through direct expenditure or through contracts with outside parties. The agency may set aside a specific sum for these supplemental purposes. In determining the allocation of funds for special experimental demonstration projects and teacher training, priority shall be given to the following types of projects:

(a) A statewide resource center to serve the needs of adult education programs operated by the Department of Education and the Kentucky Literacy Commission;

(b) A statewide training conference for adult education teachers, paraprofessionals, tutors, and volunteers;

(c) On-site demonstration projects in workplace literacy;

(d) Demonstration projects in computerized program management to facilitate reporting procedures;

(e) Regional in-service training projects; and

(f) Demonstration projects involving the development and dissemination of curricular and instructional materials for adult education programs.

(2) The Division of Adult Basic Education shall use the following criteria to evaluate and recommend approval of proposals for grants for special experimental demonstration projects and teacher training:

(a) Educational significance.

1. The proposal focuses on a problem of major importance to adult education;

2. The anticipated outcomes of the project or program will be of value to adult education on a local, state, regional, or national basis;

3. The project is consistent with the annual and long-range plans for adult education; and

4. The project is one that can be adopted or adapted by other local educational agencies.

(b) Adequacy of design or program plan.

1. The proposal must clearly define the problem to be resolved through the project;

2. The proposal clearly states the project objectives;

3. The proposal reflects a sound work plan and time schedule;

4. The application reflects adequate research and development strategies related to the proposed activities; and

5. The proposal fully describes the procedures to be followed and provides information on any data collection or statistical analyses to be undertaken as part of the project.

(c) Personnel and facilities.

1. The key personnel are qualified by training and experience to carry out the project; and

2. Adequate facilities are available to enable the participants to carry out the project.

(d) Economic efficiency.

1. The cost is reasonable as compared with the cost of other possible approaches to the problems;

2. The expenditure is justified by the probable value of the results of the project; and

3. The proposal demonstrates effort on the

part of the applicant through the use of local funds, personnel, or facilities.

(3) Each director or supervisor of adult education shall be notified annually of the availability of funds for mini-grants for innovative or special training projects and shall disseminate this information to program staff members. The Department of Education shall set priorities for mini-grants but will accept proposals that do not address these priorities if the proposals address specific needs at local levels. Before a formal application is submitted, applicants for mini-grants must file an "intent to submit" form signed by the program director or supervisor. The following criteria shall be used in reviewing proposals for mini-grants:

(a) The applicant adequately explains the program's need for the project;

(b) The applicant states what results are expected and why they are important;

(c) The applicant plans a realistic, appropriate approach to the problem and describes the specific steps to be taken;

(d) The applicant provides a plan to keep the information or records;

(e) The applicant describes the credentials and experience of the staff personnel involved in the project;

(f) The proposal is unique and innovative, could benefit students, and may be relevant to the needs of other programs;

(g) The applicant addresses needs identified as priorities for mini-grants for that funding year; and

(h) The proposed budget is reasonable in terms of anticipated outcomes.

Section 3. Dissemination and Adoption. Each project approved under Section 353 shall include a plan for disseminating its results. This plan shall show that the results will be disseminated to the U.S. Secretary of Education, the adult education clearinghouse, the state director of adult education, adult education departments of colleges and universities, other selected Section 353 projects, and local adult education personnel in Kentucky. Additional information about the projects shall be made available to local district personnel in Kentucky and other states who are interested in adopting similar projects or otherwise making use of the results of projects undertaken under Section 353.

Section 4. Monitoring. An assigned monitor from the adult education staff of the Kentucky Department of Education shall visit each program receiving funds under Section 353 once each quarter and shall submit a monitoring report after each visit. Each project shall be required to submit quarterly narrative and financial reports and to provide an annual report to the Division of Adult Basic Education within thirty (30) days after termination of the project.

Section 5. Evaluation of State Discretionary Program. At the completion of each fiscal year, the review panel shall evaluate the Section 353 projects as a whole, using the criteria listed in Section 2 of this regulation. Special consideration for future adoption or continuation shall be given to projects that could feasibly be duplicated on a statewide basis.

Section 6. Evaluation of Individual Projects. Upon the termination of each Section 353 project, the Kentucky Department of Education shall use data gathered from the monitoring of projects and the reports submitted for the projects to assess the effectiveness of each activity. Members of the state adult education staff shall also survey the beneficiaries of each project to obtain their reactions to the activity. The department shall base the criteria used in measuring effectiveness upon the goals and objectives proposed in the application for funds and the extent to which they were achieved. Within ninety (90) days after the close of the program year, an evaluation of each funded project shall be sent to the U.S. Department of Education.

Section 7. Continuation of Activities and Services. Each school district or other organization receiving funds for Section 353 projects shall be encouraged to continue the activities and services of the project after the Section 353 funding ceases. This continuation shall be encouraged by the following techniques:

(1) Each district or organization shall be notified as to how the project can receive funds under the Adult Education Act.

(2) Each district or organization shall be given information about agencies or organizations that provide funds or services to assist in the continuation of projects of this particular type.

(3) Each district or organization shall be given information about submitting its project to the National Diffusion Network for adoption as an exemplary program.

Section 8. Current Programs, Activities, and Services in the Area. Each applicant shall be required to describe the current programs, activities, and services receiving assistance from federal, state, and local sources in the area proposed to be served.

Section 9. Cooperative Arrangements. Each project applicant shall be required to list and explain the cooperative arrangements that have been made to deliver educational services to adults.

Section 10. Nonduplication of Services. The information given by the applicant in Section 8 of this regulation shall determine whether the proposed project would represent a duplication of programs, services, or activities already available to adults in the area proposed to be served by the applicant.

Section 11. Assurances. All assurances applicable to the Adult Education Act are applicable to the submission of Section 353 projects. The priorities established for these projects are designed to help the state achieve its goals under the State Plan for Adult Education and are consistent with the state's educational program.

Section 12. Teacher Training. (1) The needs of adult education teachers are determined by needs assessments, both formal and informal. The staff development coordinator in the Kentucky Department of Education plans and implements local and statewide in-service sessions based upon those assessments and current national

priorities in adult education. All teacher training projects approved under Section 353 shall meet these needs and priorities.

(2) In addition to in-service sessions, adult education teachers shall receive the following services:

(a) Clearinghouse of adult education materials, including software and videotapes, for teacher and student use;

(b) Instructional publications, including handbooks, bibliographies, and reviews of new materials;

(c) Daily technical assistance as required on test administration, teaching techniques, recruitment, and materials; and

(d) Preservice training for new teachers, including instruction in characteristics of adult learners, test administration, management of instructional programs, teaching techniques and materials, and ways of helping adults with special needs.

C. RICHARD WARNER, Vice Chairman
APPROVED BY AGENCY: June 20, 1989
FILED WITH LRC: July 3, 1989 at 3 p.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Adult and Community Education
(As Amended)

709 KAR 1:110. Approval of applications under English literacy program.

RELATES TO: KRS 156.032, 156.035, 156.070, PL 100-297

STATUTORY AUTHORITY: KRS 156.032, 156.035, 156.070

NECESSITY AND FUNCTION: KRS 156.032, 156.035, 156.070 direct the State Board for Adult, Vocational Education and Vocational Rehabilitation to be responsible for, and adopt administrative regulations for, adult education programs and services in Kentucky. This regulation prescribes the policies, activities, and procedures for approving local applications for grants of federal funds for educational programs for adults of limited English proficiency under Section 372 of the Adult Education Act.

Section 1. Goals of Activities. The goals of all activities receiving grants under this regulation shall be to help adults of limited English proficiency learn to communicate more effectively and carry out the daily affairs of life; to improve their employability through more proficient use of English; and, for those wishing to seek U.S. citizenship, to prepare them for citizenship as effective, functional members of society.

Section 2. Submission of Applications. Applications for grants under Section 372 of the the Adult Education Act shall be submitted to the Kentucky Department of Education by May 15 of each year. Grants shall be awarded under the same policies and procedures applicable to grants awarded for adult education programs under Section 322 of the Act, as set forth in 709 KAR 1:090, Approval of applications under Section 322 of Adult Education Act, P.L. 100-297 [110].

Section 3. Cooperation with Community-based Organizations. These funds shall be used to supplement the funds used under the basic state grant to provide English as a second language and citizenship classes for adults of limited English proficiency. The Department of Education shall work cooperatively with community-based organizations in urban areas to reach those most in need of services and to expand the number of persons served in these programs. When a notice of availability of funds is issued, the department shall specify that fifty (50) percent of the funds are reserved for community-based organizations that have demonstrated their capability to administer English proficiency programs.

Section 4. Criteria for Review of Applications. In reviewing applications for funds under the English literacy program, the Division of Adult Basic Education shall consider the following criteria:

(a) The adequacy of recruitment plans;

(b) The adequacy of educational assessment strategies;

(c) The extent to which the proposed activities address the identified needs for English literacy;

(d) The adequacy of retention strategies;

(e) The adequacy of evaluation plans;

(f) The extent to which such support services as transportation, child care, and counseling can be provided;

(g) The planned coordination with other agencies and organizations; and

(h) The extent to which the objectives can be accomplished within the budget requested.

Section 5. Evaluation of Programs. Each program receiving funds under Section 372 of the Adult Education Act shall be evaluated on the basis of the measurable goals and objectives set forth in the application. Grant recipients shall submit reports comparing the stated objectives to the program accomplishments at the end of the program year.

Section 6. State Administration. The Kentucky Department of Education shall not use more than five (5) percent of the funds available under Section 372 for state administration, technical assistance, and training.

C. RICHARD WARNER, Vice Chairman
APPROVED BY AGENCY: June 20, 1989
FILED WITH LRC: July 3, 1989 at 3 p.m.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims
(As Amended)

803 KAR 25:090. Workers' compensation medical fee schedule.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, KRS 342.020, 342.035

NECESSITY AND FUNCTION: KRS 342.035 requires the Workers' Compensation Board to prepare, promulgate and adopt administrative regulations relative to a schedule of medical fees for the purpose of ensuring that all fees, charges and reimbursements under KRS 342.020 shall be fair, current and reasonable. Such charges shall be

limited to those that are fair, current and reasonable for similar treatment of injured persons of a like standard of living in the same community and where such treatment is paid for by the injured person himself. The function of this proposed regulation is to regulate the provision of medical fees referred to herein and services provided pursuant to KRS 342.020 as referred to in KRS 342.035.

Section 1. Definitions. (1) Services covered. The official medical fee schedule governs all medical services provided injured employees by physicians, including medical services of hospital and clinic based physicians working on a contract basis.

(2) "Physician" includes physicians and surgeons, psychologists, optometrists, dentists, podiatrists and osteopathic and chiropractic practitioners acting within the scope of their license.

(3) Fee computation is that amount established by multiplying the listed unit value for the particular medical procedure by the applicable conversion factor. The resultant fee is considered prima facie evidence of a reasonable charge for the service provided; however, in no event is a physician permitted to charge more than his or her "usual" fee.

(4) Specific instructions precede each of the five (5) major sections of the official medical fee schedule: medicine, anesthesia, surgery, radiology and nuclear medicine and pathology. The fee schedule also includes a section pertaining to chiropractic services.

(5) Ground rules for each section: general information, special services and billing procedures and modifiers.

Section 2. Incorporation by Reference. One (1) copy of the amended official medical fee schedule is filed herewith, incorporated by reference pursuant to Workers' Compensation Board Order dated June 5, 1989, **and amended September 7, 1989,** with number of regulation and date on which it is filed, typed or stamped on the front binder cover and on the first page of the material incorporated (KRS 13A.224(5)).

Section 3. Information Available. (1) Information and material is available for public inspection and copying at main, regional and branch offices of the agency:

(a) Frankfort, Kentucky - Donna Combs, Perimeter Park Wests, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601.

(b) Louisville, Kentucky - Mr. Richard Phillips, 620 South Third Street, Louisville, Kentucky 40202.

(c) Lexington, Kentucky - Ms. Pam Goodwine, 950 Commerce National Building, 301 East Main Street, Lexington, Kentucky 40507.

(d) Paducah, Kentucky - Ms. Sylvia Curd, 400 Park Avenue, Suite B, Room 2, Paducah, Kentucky 42001.

(e) Pikeville, Kentucky - Ms. Dawn Rowe, 111 Caroline Avenue, Pikeville, Kentucky 41501.

(2) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose and the cost of the medical fee schedule, per copy, is ten (10) dollars.

ARMAND ANGELUCCI, Chairman
APPROVED BY AGENCY: June 6, 1989
FILED WITH LRC: June 6, 1989 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Securities
(As Amended)

808 KAR 10:210. Registration exemptions - Federal Regulation D.

RELATES TO: KRS 292.410(1), 17 CFR 230.252(c) (d) (e) (f) (1956), 17 CFR 230.505-506 (1982), 17 CFR 230.508(a) (1989), as amended or made effective by Release Nos. 33-6389 (April 15, 1982), 33-6437 (December 4, 1982), 33-6663 (November 10, 1986), 33-6758 (April 11, 1988), 33-6825 (April 19, 1989)

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY AND FUNCTION: To declare that registration is not necessary in the public interest for certain business transactions pursuant to KRS 292.410(1)(q).

Section 1. The following federal regulations and releases are adopted without change: 17 CFR 230.252(c) (d) (e) (f) (1956), 17 CFR 230.505-506 (1982), 17 CFR 230.508(a) (1989), as amended or made effective by Release Nos. 33-6389 (April 15, 1982), 33-6437 (December 4, 1982), 33-6663 (November 10, 1986), 33-6758 (April 11, 1988), and 33-6825 (April 19, 1989)

Section 2. [1.] Pursuant to KRS 292.410(1)(q), the director having found that registration is not necessary or appropriate in the public interest or for the protection of investors, the following transaction is determined to be exempt from the registration provisions of KRS 292.340 through KRS 292.390.

(1) Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, [Rules 230.501-230.503 and] either 230.505 or 230.506, including any offer or sale made exempt by application of Rule 508(a), as made effective in Release No. 33-6389 and as amended in Release Nos. 33-6437 [6347], 33-6663, 33-6758, 33-6825 and which satisfies the following further conditions and limitations:

(a) Persons receiving commissions, finders fees, or other remuneration in connection with sales of securities in reliance on this regulation are not relieved of compliance with KRS 292.330.

(b) No exemption under this rule shall be available for the securities of any issuer, if any of the parties [and/]or persons described in Securities Act of 1933, Regulation A, Rule 230.252, Sections (c), (d), (e) or (f):

1. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's law within five (5) years prior to the commencement of the offering.

2. Has been convicted within five (5) years prior to commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

3. Is currently subject to any state's administrative order or judgment entered by that state's securities administrator within five (5) years prior to reliance on this exemption or is subject to any state's administrative order or judgment in which fraud or deceit was found and

the order or judgment was entered within five (5) years of the expected offer and sale of securities in reliance upon this exemption.

4. Is currently subject to any state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.

5. Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five (5) years prior to the commencement of the offering permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state.

6. The prohibitions of subparagraphs 1 through 3 and 5 of this paragraph shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker/dealer employing such person is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgment or decree relating to such person.

7. Any disqualification caused by this section is automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied. It is a defense to a violation of this subsection if issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that a disqualification under the subsection existed.

(c) The issuer shall file with the Division of Securities a notice on Form D (17 CFR 239.500) no later than fifteen (15) days after the first sale of securities from this state or to an investor in this state which results from an offer being made in reliance upon this exemption.

1. Every notice on Form D shall be manually signed by a person duly authorized by the issuer.

2. Any information furnished by the issuer to offerees shall be filed with the notice required pursuant to this paragraph and, if such information is altered in any way during the course of the offering, the Division of Securities shall be notified of such amendment within fifteen (15) days after an offer using such amended information.

3. There is no filing fee.

4. In the event that the issuer files any additional documents with the United States Securities and Exchange Commission subsequent to its initial filing, copies of same shall be filed with the Division of Securities.

(d) In all sales to nonaccredited investors the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that both of the following conditions are satisfied:

1. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situations and needs. For the limited purpose of this condition only, it may be presumed that if the investment does not exceed ten (10) percent of the investor's net worth, it is suitable.

2. The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risk of the prospective investment.

(2) A failure to comply with a term, condition or requirement of subsection (1)(a), (c) and (d) of this section will not result in loss of the exemption for any new offer or sale to a particular individual or entity if the person relying on the exemption shows:

(a) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

(b) The failure to comply was insignificant with respect to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of subsection (1)(a), (c) and (d) of this section.

(3) Where an exemption is established only through reliance upon subsection (2) of this section, the failure to comply shall nonetheless be actionable by the director.

(4) [(2)] Offers and sales which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section of this Act, however, nothing in this limitation shall act as an election. Should for any reason the offers and sales fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

(5) [(3)] Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of this state's securities law.

(6) [(4)] In any proceeding involving this rule, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(7) [(5)] In view of the objective of this rule and the purpose and policies underlying the securities act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

RONDA S. PAUL, Director
EDWARD B. HATCHETT, JR., Commissioner
APPROVED BY AGENCY: June 14, 1989
FILED WITH LRC: June 14, 1989 at 11 a.m.

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

902 KAR 4:040. Special Supplemental Food Program for Women, Infants and Children (WIC).

RELATES TO: KRS 194.050, 211.180, 7 CFR Part 246

STATUTORY AUTHORITY: KRS 194.050(1), 211.090, 211.180, 7 CFR Part 246, 42 USC 1786

NECESSITY AND FUNCTION: 42 USC §1786 [P.L. 95-627], the "Child Nutrition Act of 1966," as amended and 7 CFR Part 246, authorizes grants for [Through operation of 42 USC §1786 and 7 CFR 246.10, the state is required to impose sanctions upon vendors participating in] the Special Supplemental Food Program for Women, Infants and Children (WIC) [when it is determined that a violation of program requirements has occurred]. 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 proper administration of the cabinet and its programs. The function [purpose] of this regulation is to repeal 902 KAR 4:060 and to set out [forth] the application and participation process for the Kentucky Special Supplemental Food Program for Women, Infants and Children (WIC) for both women, children, and vendors, to include the sanction, and hearing process [violations for which sanctions are to be imposed, the applicable sanctions, and the appeal rights assured an affected vendor]. This regulation includes the substance of the regulation to be repealed; therefore, no longer necessitating the old regulation.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Human Resources.

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

(3) "State agency" means the Cabinet for Human Resources or its designated representative.

(4) "Vendor" means a vendor of food items who applies for participation in the Special Supplemental Food Program for Women, Infants and Children (WIC) or who, by contract, participates in the Special Supplemental Food Program for Women, Infants and Children (WIC).

(5) "WIC program" means the Special Supplemental Food Program for Women, Infants and Children (WIC) administered pursuant to 42 USC §1786.

(6) "Person" means for purposes of a fair hearing, any applicant or participant in the WIC Program.

Section 2. The purpose of the Special Supplemental Food Program for Women, Infants and Children (WIC) is to provide supplemental foods and nutrition education at no cost to eligible persons and to serve as an adjunct to good health care.

Section 3. To be certified as eligible to participate in the WIC Program, a person **shall** [must]:

(1) Be categorically eligible as follows:

(a) Pregnant women;

(b) Postpartum women, up to six (6) months after termination of pregnancy, including those women who miscarry, have a stillbirth or abort;

(c) Breastfeeding women, up to the infant's first birthday;

(d) Infants, zero to one (1) year of age; or

(e) Children, one (1) to five (5) years of age.

(2) Be a resident of the state of Kentucky and the geographical area served by the agency.

(3) Meet the cabinet approved income criteria.

(4) Meet the nutritional risk criteria as outlined. The following conditions are considered the basis for certification:

(a) Detrimental or abnormal nutritional conditions detectable by biochemical or antropometric measurements, such as anemia, underweight, overweight, abnormal pattern of weight gain in a pregnant woman, low birth weight in an infant, or stunting in an infant or child;

(b) Other documented nutritionally related medical conditions, such as clinical signs of nutritional deficiencies, metabolic disorders, pre-eclampsia in a pregnant woman, or failure to thrive in an infant;

(c) Dietary deficiencies that impair or endanger health, such as inadequate dietary patterns assessed by a twenty-four (24) hour dietary recall, dietary history, or food frequency checklist;

(d) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, such as chronic infections in any person, alcohol or drug abuse or mental retardation in women, lead poisoning, history of high risk pregnancies or factors associated with high risk pregnancies (such as smoking; conception before sixteen (16) months postpartum; history of low birth weight, premature births, or neonatal loss; adolescent pregnancy; or current multiple pregnancy) in pregnant women, or congenital malformations in infants or children, or infants born of women with alcohol or drug abuse histories or mental retardation;

(e) An infant under six (6) months of age may be determined to be at risk if the infant's mother was a program participant during pregnancy or met risk criteria outlined during pregnancy; and

(f) A participant who has previously been certified eligible for the program may be considered to be at nutritional risk in the next certification period if the competent professional authority determines there is a possibility of regression in nutritional status without the supplemental foods. Limits on regression may be set for certain conditions, e.g., inadequate diet.

Section 4. Program benefits shall be based upon certifications established in accordance with the following time frames:

(1) Pregnant women shall be certified for the duration of their pregnancy and for up to six (6) weeks postpartum.

(2) Postpartum women shall be certified for up to six (6) months postpartum.

(3) Breastfeeding women shall be certified at intervals of approximately six (6) months and ending with the breastfed infant's first birthday.

(4) Infants shall be certified at intervals of approximately six (6) months except infants under six (6) months of age may be certified for a period extending up to the first birthday provided the quality and accessibility of health care services are not diminished.

(5) Children shall be certified at intervals of approximately six (6) months and ending with the end of the month in which a child reaches the fifth birthday.

Vacancies in the program shall be filled as they occur unless maximum participation has been reached. At that time, vacancies shall be filled by a priority system based upon the nutritional risk of the patient.

Section 5. Pregnant and breastfeeding women infants and migrants **shall** [must] be screened and notified of program eligibility or ineligibility within ten (10) days. Agencies requesting to extend the processing standards to fifteen (15) days **shall** [must] submit a written request justifying the need for the extension and a plan of action on how and when they **shall** [will] meet the above standard. all other persons applying for the program **shall** [must] be screened and notified of program eligibility or ineligibilty within twenty (20) days.

Section 6. A person shall be informed in writing of the right to a fair hearing and the method by which a hearing may be requested at the time of:

(1) Each certification;

(2) When found ineligible;

(3) Disqualification during a certification period for program abuse;

(4) When placed on the waiting list; and

(5) An action which resulted in a claim against an individual for repayment of improperly issued benefits.

Persons requesting a fair hearing **shall** [must] contact the appropriate WIC agency within sixty (60) days from the date of notice to deny or terminate benefits and a fair hearing **shall** [will] be arranged. A person may appeal a local hearing body's decision to the secretary within fifteen (15) days of the mailing date of the hearing decision notice.

Section 7. (1) An appropriate number and distribution of food vendors in order to assure adequate participant convenience and access and to assure that state agency and local officials can effectively manage a review of the vendors shall be authorized. Only authorized vendors may redeem food instruments in order to provide supplemental food to participants.

(2) In order to be an authorized WIC vendor, an applying vendor **shall** [must]:

(a) Provide all information, including sales volume, requested by the state agency.

(b) Stock, at all times, minimum inventory in accordance with the "Quantified Minimum Inventory Requirements." Pharmacies need to stock formula in accordance with the "Quantified Minimum Inventory Requirements."

(c) As appropriate, be in compliance with the Kentucky Retail Market Sanitation Regulations (902 KAR 45:045) and have a valid Kentucky Retail Market Permit under the current owner's name.

(d) Have prices commensurate with the area's authorized WIC vendors. Prices are compared according to state agency policy.

(e) Not be disqualified or withdrawn by USDA from participation in another FNS program nor denied application to participate in the food stamp program.

(f) Be requesting application for a business whose primary purpose is to be a retail grocery. (Does not apply to drug stores.) Direct distribution outlets and wholesale food establishments are not eligible. Retail firms whose primary business is something other than a retail grocery are not normally eligible for the program. This includes dairies, gas stations, specialty stores, liquor stores, home delivery groceries, bait shops, etc. In order for one these retail firms to be authorized, the applicant firm **shall** [must] have a recognized grocery department in a stationary location which is a separate and distinct area and stocks staple food items in addition to WIC approved foods. Staple food items are defined as meat, poultry, fish, bread and breadstuff, cereals, vegetables, fruit, fruit and vegetable juices, dairy products and the like. Food items such as coffee, tea, cocoa, carbonated and uncarbonated drinks, condiments and spices are not considered to be staple foods. All stores **shall** [must] have:

1. A separate area as defined above;

2. A stock of foods other than staple food items as defined above; and

3. Twenty (20) percent of their gross sales in total food sales excluding their specialty items. (Bakery goods for bakery, produce for fruit and vegetable stands.)

Dairies and home delivery groceries **shall** [will] not be approved if they operate solely as a mobile operation.

(g) Be open for business year round on a full-time basis at least eight (8) hours per day, six (6) days per week.

(h) Be accessible to monitoring by state and federal officials without prior notice.

Section 8. (1) A vendor shall be informed in writing of the right to a fair hearing and the method by which a hearing may be requested for the following:

(a) Denial of application to participate in the program; and

(b) Disqualification or other adverse action which affects participation during the agreement performance period.

(2) Expiration of an agreement with a vendor is not subject to appeal.

(3) Vendors requesting a fair hearing **shall** [must] contact the appropriate WIC agency within thirty (30) days from the date of notice to deny or terminate participation and a fair hearing **shall** [will] be arranged.

(4) A vendor may appeal a local hearing body's decision to the secretary within fifteen (15) days of the mailing date of the hearing decision notice.

Section 9. [2.] For the following acts or circumstances committed by the vendor, his employee or agent, the cabinet shall impose the following sanctions:

Type of Abuse	Period of Disqualification 1st Offense	2and Offense	3rd Offense
1. Providing cash/credit for WIC checks (trafficking)	1 year	2 years	3 years
2. Selling nonfood items for WIC WIC checks	6 months	1 year	18 months
3. Selling related but unauthorized foods	Written Warning	3 months	6 months

4. Charging more than the current retail market price for WIC food items	6 months	1 year	18 months
5. Charging for food not received by the WIC participant	1 year	2 years	3 years
6. Charging for food not authorized on the WIC check	6 months	1 year	18 months
7. Redeeming WIC checks outside valid period	Written Warning	3 months	6 months
8. Not recording actual purchase price on WIC checks at time of purchase	Written Warning	3 months	6 months
9. Giving due bills, IOU's or rainchecks	Written Warning	3 months	6 months
10. Suspension from Food Stamp Program	Equivalent to food stamp disqualification period (does not have to run concurrently)		
11. Nonpayment of a claim made by state agency	3 months	6 months	1 year
12. Discrimination (separate WIC lines, denying trading stamps, other customer courtesies)	Written Warning	3 months	6 months
13. Failure to allow monitoring and inspection of store premises, records and procedures or access to WIC checks	Written Warning	3 months	6 months
14. Failure to return WIC vendor authorization stamp upon request	Add 3 months to previously established disqualification period or monetary penalty in the amount of unauthorized funds received or both		
15. Requiring cash purchase to redeem WIC checks	Written Warning	3 months	6 months

Notice of sanction to be imposed by the cabinet and the date upon which such sanction is to commence may be hand-delivered to the vendor or mailed certified mail return receipt requested to the vendor's last known address.

Section 10. [3.] (1) Any vendor aggrieved by a decision of the cabinet to impose a sanction authorized by this regulation may file a written request for a hearing with the cabinet no later than twenty (20) days after receipt of notice. Upon receipt of a request for a hearing, the secretary shall appoint one (1) or more impartial hearing officer(s) to conduct the hearing. Within five (5) days of a request for a hearing, the cabinet shall advise the subject vendor of the date, time and place of the scheduled hearing and of the opportunity to review the records of the cabinet prior to the date of the hearing.

(2) On the date of the hearing the subject vendor shall have:

(a) An opportunity to present its case against the imposition of any sanction;

(b) The opportunity to be represented by counsel, if desired; and

(c) The opportunity to confront and to cross-examine witnesses.

(3) The hearing officer(s) shall decide upon the validity of the violation and sanction imposed based upon the record of the hearing and the relevant statutory and regulatory provisions governing the WIC program. The basis of the decision shall be in writing and shall be the final decision of the cabinet. [It need not contain formal findings of fact and conclusions of law.]

(4) A decision shall be reached and written notification of the decision forwarded to the vendor no later than sixty (60) days from the date of receipt of the written request for hearing. Any vendor aggrieved shall have the right to appeal such decision to the circuit court of the county wherein the vendor has his principal place of business.

Section 11. 902 KAR 4:060, Kentucky state plan of program operations and administration for the special supplemental food program for women, infants and children (WIC), is hereby repealed.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.

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

905 KAR 6:010. Standards.

RELATES TO: KRS 273.405 to 273.453, 42 USC 9901-9912, Title 45 CFR 96.1 [273.410 to 273.468]

STATUTORY AUTHORITY: KRS 194.050, 273.448 [Chapter 273]

NECESSITY AND FUNCTION: This regulation, which relates to the operation and oversight of community action agencies, is being promulgated pursuant to the mandate of KRS 273.448 that the state administering agency shall "establish standards in accordance with applicable state and federal laws and regulations by which administrative, fiscal and programmatic effectiveness of the act in the Commonwealth shall be measured."

Section 1. Scope. (1) This regulation relates [is related] to the administration of community action agencies in regard to Community Services Block Grant programs funded for and on the behalf of Kentucky residents meeting poverty

income guidelines issued by the U.S. Department of Health and Human Services.

Section 2. Definitions. [(1) "Board of directors" means the governing board of a community action agency.]

(1) [(2)] "Cabinet means the Cabinet for Human Resources. ["Community action agency (CAA)" means a political subdivision or a private nonprofit corporation organized for the purpose of alleviating poverty within a community or specific geographic area.]

(2) [(3)] "Community Services Block Grant (CSBG)" means Community Services Block Grant funds made available by 42 USC 9901-9912 [P.L. 97-35 or its successors]. ["Cabinet" means the Cabinet for Human Resources.]

(3) [(4)] "Community Action Board" means the board of directors of a community action agency which is a political subdivision. ["Department" means the Department for Social Services.]

(4) "Governing Board" means the board of directors of a private nonprofit community action agency.

(5) "Department" means the Department for Social Services. ["Community Services Block Grant (CSBG)" means Community Services Block Grant funds made available by P.L. 97-35 and its successors.]

(6) "Designating official" means the chief elected official(s) of the eligible political subdivision or subdivisions where such political subdivision(s) is a community action agency.

Section 3. Board of Directors. (1) Each community action agency shall establish and maintain a board of directors in accordance with KRS 273.437 and 273.439.

[(2) The board of directors shall develop written personnel rules and regulations including, but not limited to:]

[(a) Job classifications;]

[(b) Specifications;]

[(c) A compensation plan;]

[(d) Attendance and leave policies;]

[(e) Fringe benefits;]

[(f) Affirmative action;]

[(g) Personnel grievance procedures; and]

[(h) Hiring and firing practices.]

[A copy of the personnel rules and regulations shall be available to all staff.]

(2) [(3)] Governing boards and community action boards [The board of directors] shall adopt written bylaws. The bylaws shall include, but not be limited to:

(a) The purpose of the agency;

(b) Duties and responsibilities of the board;

(c) [(b)] Number of members;

(d) [(c)] Qualifications for board memberships;

(e) [(d)] The types of membership;

(f) [(e)] The method of selecting members;

(g) [(f)] Terms of members;

(h) [(g)] Officers and duties;

(i) [(h)] Method of election of officers and chairpersons;

(j) [(i)] Standing committees, if any;

(k) [(j)] Provision for approval of [all] programs and budgets;

(l) [(k)] The frequency of board meetings and attendance requirements; and

(m) [(l)] Provision for official record of meetings and action taken.

[The board of directors shall elect its officers and executive committee, if any.]

(3) [(4)] The boards and the designating officials [of directors] may delegate the responsibility to carry out the program and fiscal requirements to the executive director; but shall not delegate final approval, responsibility, accountability, or direction of policy.

Section 4. Board [of Directors] Meetings. (1) All board meetings shall be open to the public except where such a requirement constitutes a breech of an individual's right to confidentiality. A simple majority shall constitute a quorum for all board meetings. Roberts Rules of Order shall be applicable to board meetings.

(2) The meetings of governing boards and community action boards [the board of directors] shall be recorded and a written record made. The minutes shall include, but not be limited to:

(a) Date, time and place of meeting;

(b) Names of members attending;

(c) Topics discussed, problems, recommendations made or presented, and plans for change and improvements;

(d) Decisions reached and actions taken; [, target dates for implementation or recommendations; and]

(e) The executive director's report and such other reports as are presented; and

(f) Recommendations made by the community action board to designating officials of the eligible political subdivision(s).

The minutes shall be approved by the board of directors and signed by the appropriate officer. A copy of the minutes shall be distributed in timely fashion to each board member, the executive director, and the Department for Social Services.

Section 5. Administration. (1) Each community action agency in accordance with KRS 273.441 and 273.443, and with the knowledge and concurrence of appropriate officials and boards as required in KRS 273.437 and 273.439, shall: [The board of directors shall]

(a) Submit such reports, records, or other information the department deems necessary to fulfill requirements to determine fiscal, administrative, and programmatic effectiveness in their utilization of CSBG funds.

(b) Develop written personnel rules and regulations including, but not limited to:

1. A job classification plan including the provision of a systematic arrangement of job positions in the agency indicating title and related duties and responsibilities for each position. For those positions which are sufficiently similar as to the duties performed and to the scope of responsibility, equal pay ranges shall be allocated to the same job classification. These shall be reviewed at least every four (4) years;

2. Job specifications including for each job classification, the required education, experience, training, skills and other qualifications required. These shall be reviewed at least every four (4) years;

3. A compensation plan including the provision of a pay plan for all agency employees outlining pay grades or salary rates, salary adjustments, salary advancements, and overtime adjustments as appropriate for the job classifications. All rates of pay shall be consistent with the functions outlined in the job classification plan. These shall be reviewed at least every

four years;

4. Attendance and leave policies including the accumulation and credit of annual leave, sick leave, compensatory or overtime leave, military leave, leave related to the birth or adoption of a child, court leave, voting leave, absence without leave, and for other conditions of specific leave. These shall be reviewed at least every four (4) years;

5. A fringe benefit plan including the coverage and conditions of those items provided by the agency without affecting basic salary or wage rates such as hospitalization insurance, dental insurance, holidays, disability leave, personal leave, retirement or pension, and deferred compensation. These shall be reviewed at least every four (4) years.

6. Affirmative action including a policy statement that it is the agency's intention to give equal opportunity in hiring, advancement opportunities and in work assignments regardless of race, color, handicap, religion, sex, age, or national origin;

7. Personnel grievance procedures including a plan for resolving employee grievances and complaints. This procedure shall describe the method that the agency follows when an employee is dissatisfied with some aspect of his working conditions. The procedure **shall** [should] outline how the employee files the complaint, who reviews the complaint, who hears the complaint, who may attend the hearing, length of time for the hearing decision, and the next level of appeal if the employee is still dissatisfied with the hearing results; and

8. Hiring and firing practices, including a plan for hirng of employees, promotions, demotions, job postings and advertisements, resignations, lay-off procedures, disciplinary actions, and dismissal procedures.

9. A copy of the personnel rules and regulations shall be available to all staff.

(c) [(2) The board of directors shall] Assure that there is no discrimination against [staff,] applicants or recipients of services because of race, color, age, sex, religion, creed, ancestry, or national origin.

(d) [(3) The board of directors shall] Be responsible for compliance with all conditions of all contracts and grants, and with appropriate state and federal [applicable] laws, [and] regulations, and cost principles.

(e) [(4) The board of directors shall] Indemnify the cabinet [department] against any and all claims, including attorney fees and other costs of litigation which may result from damage caused by agency's [CAA's] employees or the negligent acts or omissions of the agency's [CAA's] agents, employees or subcontractors.

(f) [(5) The board of directors shall] Assure that all notices, information pamphlets, research reports and similar public notices prepared and released by the community action agency [CAA] pursuant to its contract for CSBG funds shall include the statement: "This project is funded, in part, under a contract with the Cabinet for Human Resources with funds from the Community Services Block Grant Act of the U.S. Department of Health and Human Services."

(g) [(6) The board of directors shall] Assure that no employee or representative of a community action agency [CAA] with procurement authority shall participate either directly or indirectly in any activities that are in conflict with the [these] provisions of [stated in] KRS 45A.455.

(2) Each community action agency with the knowledge and concurrence of appropriate officials and boards, shall develop written fiscal and program operation policies and manuals which are periodically reviewed and updated.

[Section 6. Program. The board of directors shall develop written fiscal policies and a program manual which addresses each service program. The manual is to be periodically revised and kept up to date.]

[(1) The board of directors shall comply with, but not be limited to, the following requirements:]

(a) Fiscal records shall be maintained in accordance with generally acceptable accounting procedures and practices and in conformity with the CSBG Audit Guide published by the department;

(b) A current written financial report shall be presented to the board of directors at least quarterly [the first meeting following the close of each quarter] or more frequently if requested by the board or the cabinet;

[(c) Financial records shall be audited by Cabinet for Human Resources auditors following the close of each fiscal year and a copy of the audit report provided the board; and]

[(d) All CAAs shall comply with applicable portions of the Federal Administration of Grants, Title 45 CFR Part 74, OMB A-122 and amendments thereto.]

(c) [(2)] The program manual which may be characterized as an operations manual, shall include, but not be limited to:

1. [(a)] Criteria for determining eligibility of individuals for all programs;

2. [(b)] Intake process including information needed to approve an applicant;

3. [(c)] Procedures for accepting referrals from other agencies;

4. [(d)] Records to be kept on applicants and clients and statistical data on intake;

5. [(e)] Reports to be made to the cabinet and frequency;

6. [(f)] Procedures to be followed when an applicant is found ineligible; [and]

7. [(g)] Complaint procedures and hearings; and

8. [(3) The board of directors shall ensure and approve overall program plans and priorities for the agency including provisions for evaluating program accomplishments, realistic and attainable short-term and long-term goals stated in measurable terms,] A description of each program's organizational structure, major lines of authority and areas of responsibility within the programs.

9. Procedures for documenting the extent of participation of the poor in agency CSBG programs.

[(4) The board of directors shall ensure documentation in writing of the extent of the participation of the poor in the programs.]

(3) [(5)] The community action agency [board of directors] shall assure that clients dissatisfied with services rendered under CSBG contracts shall be provided an opportunity to file a formal complaint and to be heard at the local level. If the grievance is not resolved as a result of the complaint procedure, the client shall be provided an opportunity to appeal a decision resulting from the local hearing process to the Department for Social Services. The complaint and hearing procedures shall be

posted in each agency office.

[(6) The board of directors shall ensure the development of a written agreement with the local departmental Social Services Manager that shall include, but not be limited to, such items as: exclusive roles, services to be provided, a joint referral mechanism, and the assurance that through cooperative efforts both parties have been able to identify and address the vital services needed by the CAA geographic area. This agreement is to be submitted to the department for review and approval.]

[Section 7. Personnel. (1) The executive director shall be appointed by the board of directors in accordance with the personnel policies and procedures. The executive director shall serve at the pleasure of the board and shall perform such functions as delegated to him/her in writing by the board.]

[(2) The board of directors shall ensure the development of a written staffing pattern including job classifications and compensation with a well defined organizational chart clearly delineating lines of authority, agency and program heads and relationships of all employees. The staffing pattern shall be sufficient to carry out the programs of the agency.]

(4) [(3)] The community action agency [board of directors] shall ensure the design, implementation and documentation an in-service training program for staff. Additional training shall also be documented for staff.

Section 6. Income Eligibility, Validation, and Determination. (1) To be eligible to participate in services and programs funded with CSBG funds, individuals' and families' incomes shall be limited to those that fall at or below 100 percent of the current poverty level as determined by the Director of the United States Office of Management and Budget and published in the federal register. When an individual or family receives only information and referral services, it can be done without regard to income. If screening for programs were the eligibility factor is higher, the factor for that other program applies.

(2) To receive a service or to participate in a CSBG funded program, an individual or a family shall meet the income criteria established in subsection (1) of this section. An individual's or family's declaration of income will generally be acceptable as proof of eligibility. The individual or family head shall sign a document attesting to the amount of declared income and their eligibility to receive services. An agency or its worker may require that a client produce proof of eligibility; if proof of eligibility is obtained, a dated copy of the client's documentation shall be placed in the client's file.

(3) Initial eligibility shall be determined within thirty (30) days of application, with redetermination any time thereafter when there is a change in circumstances but not less than annually.

Section 7. [8.] Maintenance of Case Records. (1) A written log shall be maintained by the community action agency on all referrals made by outside agencies or individuals including date of referral, referring agents, reason for referral and disposition.

(2) A CSBG case record shall be maintained on each applicant accepted for ongoing service. The record shall include:

(a) Intake information. The form shall include, but not be limited to:

1. Name, address, and telephone number of the applicant;
2. Birthdate;
3. Sex;
4. Race or ethnic origin;
5. Income;
6. Level of education completed;
7. [6.] Presenting problems;
8. [7.] Date;
9. [8.] Staff member gathering information;
10. [9.] Referral agent, if any;
11. [10.] Approval or disapproval and date; and
12. [11.] The signature of the person making the determination or the referral.

(b) A service plan;

(c) Chronological recording of all supervisory and staff contacts with clients reflecting work accomplished during service contact;

(d) Copies of correspondence and other pertinent information;

(e) Recertification, of eligibility, if appropriate [needed];

(f) Fees, charged or collected, if any; and

(g) Information regarding termination of services.

(3) Each community action agency [The board of directors] shall ensure that client case records are maintained in conformity with existing laws pertaining to confidentiality. The records shall be maintained in locations which are secure and convenient to service delivery staff.

(4) The community action agency [board of directors] shall ensure development and implementation of a written client case records retention and disposal schedule.

(5) If the agency receives one-fourth (1/4) or more of its funds from state or local authority, the agency [board of directors] shall comply with the open records law, KRS 61.870-61.884 [991].

Section 8. [9.] Monitoring and Evaluation Reports. Each community action agency, with the knowledge and concurrence of appropriate officials and boards are required in KRS 273.437 and 273.439 to meet the following:

(1) [The board of directors shall] Establish effective controls that are designed to achieve and maintain maximum standards of service delivery and utilization and conservation of physical and financial assets.

(2) [The board of directors shall] Ensure the development of a data collection and recordkeeping system that allows for administrative, program and fiscal monitoring and evaluation.

(3) [The board of directors shall] Ensure the design and implementation of program reviews and studies to determine under or over utilization of each program, progress toward goals and objectives.

(4) [The board of directors shall] Permit monitoring, review, and evaluation of the total agency operation by the Department for Social Services or its designee in accordance with the terms of the contract and appropriate federal and state laws.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: June 12, 1989
FILED WITH LRC: June 22, 1989 at 11 a.m.

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

905 KAR 6:040. Termination of funding and hearing procedures.

RELATES TO: KRS 273.451
STATUTORY AUTHORITY: KRS 194.050, 273.448, 42 USC 9901-9912, Title 45 CFR 96.1
NECESSITY AND FUNCTION: This regulation establishes the conditions by which the cabinet can terminate Community Services Block Grant (CSBG) funding to a grantee. This regulation also addresses the grantee's right to request and receive a hearing before a qualified hearing officer. Definitions for this regulation are the same as listed in the rest of this regulation.

Section 1. Grantee Termination. For the purpose of this part, administrative requirements specified in 42 USC 9901-9912 [P.L. 97-35] and KRS 273.451 are applicable.

(1) Any community action agency (CAA), either established (i.e., local designation and state recognition) under the Community Services Block Grant Act (the Act) or under the Kentucky CSBG program in accordance with the Act and the Community Action Law in KRS Chapter 273 shall be awarded continuing CSBG program administering responsibilities in its established jurisdiction unless the following shall occur:

(a) The CAA submits written communication to the Department for Social Services stating its desire to discontinue operation of the program;

(b) Material failure by the CAA to comply with Sections 673, 675, 677, or 680 of the Act; or 45 CFR 96.30, 96.51, 96.90, or 96.91 (1986); the provisions of the state CSBG plan or any provisions of KRS 273.405-273.453; or 905 KAR 6:010. Material failure includes, but is not limited to: fraud, disallowance of costs which could render a CAA insolvent, or denial of access to records of grant-related transactions.

(c) The CAA does not have the authority or capability to receive, administer, and account for funds in a manner that conforms with applicable federal or state requirements or with generally accepted accounting principles.

(d) The CAA is not capable of effectively planning, conducting, administering, or evaluating CSBG funded programs or projects;

(e) The CAA fails to conform in one (1) or more ways to the assurances relating to the structure and operation of CSBG program contractors that the Commonwealth of Kentucky has provided the United Stated Department of Health and Human Services, including prohibitions regarding partisan political activities, voter registration, and transportation of voters to the polls; or

(f) The CAA is structured and functions in a manner inconsistent with state or federal laws or regulations.

(2) Upon discovery of one (1) or more of the conditions noted in paragraphs (b) through (f) of this subsection, the cabinet shall notify the CAA in writing of its initiation of the termination process and the reasons for termination. The notice will advise the CAA that, in accordance with this section and Section 675(c)(11) of the Act, it is entitled to an informal hearing.

Section 2. Hearing Procedures. The CAA will be given fifteen (15) days from receipt of such notification to inform the cabinet in writing that it wishes to exercise its right to a hearing. The hearing will be conducted within thirty (30) days of the original notification of initiation of the termination process. The notification shall also include:

(1) A requirement that the CAA, in order to receive continued CSBG funding, shall agree to cooperate with the cabinet appointed hearing officer throughout the termination process.

(2) In the event the CAA does not agree to submit to the cabinet review specified in Section 1 of this regulation, the cabinet shall send to the CAA a notice of funding suspension, pending termination, pursuant to these regulations and KRS 273.451. Simultaneous with suspension notice to the CAA's, the cabinet will notify the U.S. Department of Health and Human Services of same and the department will advise the suspended CAA of its right to seek direct funding from the U.S. Department of Health and Human Services.

(3) The services of an impartial hearing officer will be obtained by the cabinet. Notice of the hearing time and date will be provided, with proof of receipt of notice, to both the CAA or appropriate public officials at least ten (10) days prior to the hearing. The cost for the hearing officer and the services of the certified reporter and the original transcript of the proceedings shall be borne by the Cabinet for Human Resources. The CAA shall bear the cost of its copy of the transcript of proceedings.

(4) The hearing shall be conducted in accordance with due process before a qualified hearing officer. The report of the hearing officer will be sent via registered mail to both parties within thirty (30) days of the completion of the hearing.

(5) The cabinet will review the hearing officer's recommendation and will base its decision on findings of fact and conclusions of laws that substantiate grant termination pursuant to this regulation. The cabinet will notify the CAA of the cabinet's final determination within thirty (30) days.

(6) If the cabinet's decision is to suspend or terminate funding to the CAA the cabinet shall also, with its notice to the CAA, advise the CAA of the provisions for review of the termination proceedings to the Secretary of the U.S. Department of Health and Human Services pursuant to Section 676(a) of the Act.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 12, 1989
FILED WITH LRC: June 22, 1989 at 11 a.m.

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

907 KAR 1:450. Nurse aide training criteria and registry.

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 nurse aide training and competency evaluation program requirements and specifies the establishment and function of the nurse aide registry.

Section 1. Definitions. The following definitions shall be applicable to this regulation unless the specific context dictates otherwise:

(1) "Nurse aide training and competency evaluation programs" means the program(s) of nurse aide training and competency evaluation for nurse aides required by Title XIX of the Social Security Act to be in place for Title XIX participating nursing facilities (skilled nursing or intermediate care), when the program is approved by the state in which the nursing facility is located.

(2) "Competency evaluation program" means the competency evaluation program required by Title XIX of the Social Security Act for nurse aides employed by Title XIX participating nursing facilities prior to July 1, 1989, when the program is approved by the state in which the nursing facility is located.

(3) "Nurse aide" means any individual providing nursing or nursing related services to residents in a nursing facility but does not include an individual who is a licensed health professional or volunteers who provide the nursing or nursing-related services without monetary compensation.

(4) "Licensed health professional" means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(5) "The state approved program" means the nurse aide training and competency evaluation program requirements shown in the manual entitled "Kentucky Department for Medicaid Services Nurse Aide Training and Competency Evaluation Program" (dated July 1989) which is hereby incorporated by reference. Nurse aide training and competency evaluations shall be performed by or for nursing facilities located in the state of Kentucky in accordance with the terms, conditions, and criteria specified in the manual for the state approved program.

Section 2. General Requirements. A participating nursing facility shall not use nurse aides on or after January 1, 1990 for more than four (4) months unless the nurse aide has completed the nurse aide training and competency evaluation program, or the competency program if the individual was used by the facility prior to July 1, 1989 as a nurse aide, or is deemed to meet the competency evaluation prior to January 1, 1989, as specified in the manual for the approved state program.

Section 3. Regular In-service Education and Ongoing Staff Development. Following successful completion of the nurse aide competency evaluation program, each nursing facility is required to provide and document (as specified in the state approved program manual) six (6) hours of ongoing staff development per quarter for each nurse aide.

Section 4. Minimum Curriculum and Content Requirements. The "basic course" of nurse aide training consists of a minimum of forty-five (45) classroom hours for theory and laboratory time and thirty (30) hours of clinical experience for a total of seventy-five (75) hours. Criteria for primary instructors, program coordinators, trainers, resource people, and curriculum content are shown in the manual for the state approved program.

Section 5. Approval, Initial Postapproval Review, and Ongoing Review of Nurse Aide Training Programs. The nurse aide training program may be conducted by means of an Office of Vocational Education program, nursing facility program, community college or university program or a licensed proprietary education program. Each agency wishing to provide nurse aide training must request and receive approval of the agency's training program by the Department for Medicaid Services prior to operating the nurse aide training program in accordance with the criteria shown in the manual for the state approved program. After initial approval, the Department for Medicaid Services shall conduct an initial one (1) year postapproval review. After the one (1) year postapproval review, each program will be monitored as follows:

(1) Approved nurse aide training programs conducted by nursing facilities shall be monitored on site by the Division of Licensing and Regulation, Office of the Inspector General, during the regularly scheduled annual survey for compliance with conditions of participation.

(2) Approved nurse aide training programs conducted by the Office of Vocational Education shall be monitored on site by that office at least every two (2) years; a self-evlauation shall be submitted by the training program to the on-site review agency each year that an on-site review is not performed.

(3) The Department for Medicaid Services shall conduct an on-site review of all other approved nurse aide training programs at least every two (2) years, and the training program provider shall submit to the department a self-evaluation in each year than an on-site review is not performed.

Section 6. Termination of Nurse Aide Training Programs. The Department for Medicaid Services shall terminate from participation in the training program those previously approved nurse aide training programs not meeting minimum requirements and which do not submit an acceptable plan of correction.

Section 7. Final Examination/Competency Evaluation. The Department of Education, Office of Vocational Education, **or other qualified entities as approved by the cabinet,** shall be (by agreement with the Department for Medicaid Services) responsible for the final written or oral examination and the skills demonstration aspect of the competency evaluation. [The test is validated by the Department of Education to ensure its reflection of the material presented in the training, and the Department of Education

has responsibility to maintain the integrity of the test and the individual examinations.]

Section 8. State Nurse Aide Registry. The Division of Licensing and Regulation, Office of the Inspector General shall (by agreement with the Department for Medicaid Services) be responsible for establishing and maintaining a registry of all nurse aides who have satisfactorily completed a nurse aide training and competency evaluation program. In addition to the names of individuals having satisfactorily completed the nurse aide training and competency evaluation program, or the competency evaluation program, the registry shall include specific documented findings by the state of individual resident abuse or neglect or misappropriation of resident property by nurse aides listed in the registry (determined in accordance with statutory requirements shown in Section 1919(g) of the Social Security Act), and a brief statement (if any) by the nurse aide disputing the finding(s); a finding may be included on the registry only after the nurse aide has been provided at least ten (10) days advance notice of the proposed finding and an opportunity for a hearing (if desired) for the nurse aide to rebut allegations. In the case of an inquiry to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any nurse aide statement of rebuttal in the registry relating to the finding or a clear and accurate summary of such a statement.

Section 9. Reciprocity. A nurse aide who has completed a nurse aide training and competency evaluation program in another state and is on that state's nurse aide registry shall be granted reciprocity in Kentucky if the following conditions are met:

(1) The other state's registry must provide appropriate written documentation showing the individual is on the other state's registry;

(2) An employment record must be provided to the Division of Licensing and Regulation sufficient to verify that the aide has been employed in a nursing home since the training and twenty-four (24) months have not elapsed since the individual worked for pay as a nurse aide; and

(3) There must be no documented findings on the registry of individual resident abuse or neglect or misappropriation of resident funds for the individual on the registry.

Section 10. The manual incorporated by reference in this regulation may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING

CABINET FOR HUMAN RESOURCES
Office of the Inspector General
(Amended After Hearing)

902 KAR 20:280. Standards for prescribed pediatric extended care.

RELATES TO: KRS 216.875, 216.880, 216.885
STATUTORY AUTHORITY: KRS 216.042, 216.890
NECESSITY AND FUNCTION: KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health facilities and health services. KRS 216.890 mandates that the Kentucky Cabinet for Human Resources promulgate standards to regulate prescribed pediatric extended care (PPEC) services.

Section 1. Definitions. (1) "Developmentalist" is a master's prepared individual with current experience in transdisciplinary evaluation and treatment planning for children who are at risk for or experiencing developmental delay.

(2) [(1)] "Protocol of care" is the comprehensive plan for implementation of medical, nursing, psychosocial, developmental, and educational therapies to be provided by the PPEC. An individualized protocol of care shall be developed upon admission and shall be revised to include recommended changes in the therapeutic plans. The disposition to be followed in the event of emergency situations shall be specified in the protocol of care.

(3) [(2)] "Prescribing physician" is the physician who signs the order admitting the child to the PPEC.

(4) [(3)] "Primary physician" is the physician who maintains overall responsibility for the child's medical management and is available for consultation and collaboration with the PPEC staff.

(5) [(4)] "Medical director" is a board certified pediatrician who serves as the liaison between the PPEC and the medical community, reviews the quality and appropriateness of PPEC services, and is available for consultation to the PPEC staff.

(6) [(5)] "Nursing director" is a licensed registered nurse responsible for providing continuous supervision of PPEC services and managing the daily operations of the facility.

(7) [(6)] "Occupational therapist" means a person who is licensed pursuant to KRS Chapter 319A.

(8) [(7)] "Speech pathologist" means a person who is licensed pursuant to KRS Chapter 334A.

(9) [(8)] "Social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Worker Education.

(10) [(9)] "Physical therapist" means a person who is licensed pursuant to KRS Chapter 327.

(11) [(10)] "Child life specialist" is an individual with baccalaureate preparation in child life, early childhood education, or a related field and current experience in planning and implementing developmental stimulation programs for children.

Section 2. Scope of Operation and Services. The prescribed pediatric extended care (PPEC) center is a nonresidential health care service which provides an important link in the continuum of care for medically or technologically dependent children. The (PPEC) center provides the following triad of necessary services for dependent children and their parents: day health care, developmental interventions, and parental training.

Section 3. Applicability. (1) All prescribed pediatric extended care facilities shall be equipped and staffed to accommodate no fewer than three (3) medically/technologically dependent children and shall meet standards established herein.

(2) All PPEC facilities shall have a minimum full-time equivalent staff of two (2) registered nurses and one (1) nursing assistant. Thereafter, the ratio of staff to children shall be maintained at:

3-12 children	2 RN's plus 2 others
13-18 children	3 RN's plus 3 others
19-24 children	4 RN's plus 4 others

[one (1) RN staff for every six (6) children; or one (1) staff (LPN or nursing assistant) to every three (3) children.]

Section 4. Criteria for Admission. (1) Infants and children considered for admission to the PPEC facility shall be those with complex medical conditions requiring continual care, including but not limited to, supplemental oxygen, ventilator dependence, cystic fibrosis, apnea, spinal cord injury and malignancy, etc.

(2) Children with risk of infection shall not be admitted unless authorized by the prescribing physician.

(3) The primary physician, in consultation with the parent(s) or legal guardian(s), shall recommend placement in a PPEC facility, taking into consideration the medical, emotional, psychosocial and environmental factors.

(4) The child shall be medically stabilized, require ongoing nursing care, and other interventions.

Section 5. Preadmission Conference. (1) If the child meets the admission criteria, the primary physician or his/her designate shall contact the medical or nursing director of the PPEC to schedule a preadmission conference.

(a) If the child is hospitalized at the time of referral, preadmission planning shall include the parent(s) or guardian(s), relevant hospital medical, nursing, social services and developmental staff to assure that the discharge plans shall be accommodated following placement in the PPEC.

(b) If the child is not hospitalized at the time of referral, preadmission planning shall be conducted with the primary physician, parent(s) or guardian(s), PPEC representatives and representatives of other relevant agencies as determined by the primary physician, and nursing director of the PPEC.

(c) Preadmission planning shall be scheduled within seventy-two (72) hours and allow sufficient time to assure that the therapeutic

plan can be implemented upon placement in the PPEC.

(d) The protocol for care shall be developed by the PPEC staff following preadmission planning.

(e) The protocol for care shall include specifications of criteria for discharge from the PPEC.

(2) A consent form, outlining the purpose of a PPEC facility, family responsibilities, authorized treatment and appropriate liability releases, and emergency disposition plans shall be signed by the parent(s) or guardian(s) and witnessed prior to admission to the PPEC facility. The parent(s) or guardian(s) and the PPEC facility shall be provided a copy of the consent form.

Section 6. Admission Procedure. (1) Infants and children shall be considered for admission to the PPEC facility if they have complex medical conditions requiring skilled nursing care, e.g., children with conditions including but not limited to, supplemental oxygen, ventilator dependence, cystic fibrosis, apnea, spinal cord injury and malignancy, etc.

(2) In consultation with the parent(s) or legal guardian(s), a child may be referred to the PPEC medical or nursing director for determination of placement.

(3) All children placed in the PPEC facility shall have documentation of a physician's written order placed in the child's medical record. A copy of the order shall be provided to the child's parent(s) or guardian(s).

(4) Prior to placement, preadmission planning conferences shall be held for the purpose of developing a protocol for care.

(5) The protocol for care shall be developed under the direction of the PPEC nursing director and shall specify the treatment plan needed to accommodate the medical, nursing, psychosocial and educational needs of the child and family. Specific goals for care shall be identified. Plans for achieving the goals shall be determined and a schedule for evaluation of progress shall be established. The protocol shall include specific discharge criteria.

(6) The protocol shall be signed by the physician, authorized representative of the PPEC and parent(s) or guardian(s). Copies of the protocol shall be given to the parent(s) or guardian(s). Copies of the protocol shall be given to the parent(s) or guardian(s) primary physician, PPEC staff and other agencies as appropriate.

(7) A consent form, outlining the purpose of a PPEC facility, family responsibilities, authorized treatment, appropriate liability releases, and emergency disposition plans shall be signed by the parent(s) or guardian(s) and witnessed prior to admission to the PPEC facility. The parent(s) or guardian(s) and the facility shall be provided a copy of the consent form.

Section 7. Provision of Services. (1) Medical staff services.

(a) Children shall be admitted to the PPEC upon prescription by the child's primary physician or by the medical director.

(b) The child's primary physician shall maintain responsibility for the overall medical therapeutic plan and shall be available for consultation and collaboration with the PPEC medical and nursing personnel.

(c) The medical director shall participate in reviews of the protocol for care. Prescribed therapies shall be adjusted in consultation with the primary physician to accommodate the child's condition.

(d) The PPEC shall coordinate the prescribed therapies for the child.

(2) Nursing staff services.

(a) A PPEC nursing staff member shall participate in preadmission planning.

(b) Nursing personnel, under the direction of the nursing director, shall be responsible for implementing the nursing care.

(c) Nursing personnel shall be responsible for monitoring and documenting the effects of prescribed therapies.

(d) Nursing personnel shall inform the primary physician and medical director of the results of therapeutic interventions.

(e) Nursing personnel shall participate in interdisciplinary staffings regarding the child's progress.

(f) Nursing personnel shall assure that the PPEC provides an environment conducive to the stabilization of the child's medical condition and the promotion of the child's development.

(g) Nursing personnel shall be responsible for maintaining the child's record in accordance with facility policies and procedures.

(h) Nursing personnel shall instruct the parent(s) or guardian(s) in how to provide the necessary therapies in the home.

(3) Developmental services.

(a) Each child shall have a functional assessment and an individualized program plan to accommodate the child's developmental needs. The following functional areas shall be included as appropriate: self care, communication skills, social skills, motor skills, preacademic areas, play with toys/objects, growth and development appropriate for age.

(b) The child's program plan shall include specific programs and action steps to facilitate developmental progress and shall be reviewed at least quarterly.

(c) The child's developmental and educational needs shall be incorporated into the protocol for care.

(d) The child's program plan shall include:

1. Measurable goals in need areas or goals to enhance and normalize independent functioning in daily activities.

2. A description of the patient's strengths and present performance level with respect to each goal;

3. Skill areas in priority order;

4. Anticipatory planning for specific areas identified as at-risk for future problems.

(e) The child life specialist shall participate in regularly scheduled interdisciplinary staffings.

(f) A program for parent(s) or guardian(s) shall be provided to prepare parent(s) or guardian(s) to accommodate the child's developmental needs.

(g) The PPEC shall provide parent(s) or guardian(s) education services by including them in care-related conferences and teaching them how to perform necessary therapies and how to meet the developmental and psychosocial needs of their child at home.

(h) PPEC staff shall make referrals to appropriate resources, facilitate access to community, social, educational and financial

services, and shall provide counseling to enhance coping skills, interpersonal relationships and family functioning.

(4) Nutritional services.

(a) Therapeutic diets shall be maintained in the patients file.

(b) [(a) If needed,] The services of a registered dietition shall be available regarding the nutritional needs, the [and] special diets of individual children, and to assist in the development of policies and procedures for the handling, serving, and storage of food.

(c) [(b)] All food and formula except for specialized formula shall be provided by PPEC staff under the supervision of the nursing director.

(d) [(c)] Prepared foods shall be kept under refrigeration with identifying dates and patient names.

Section 8. Quality Assurance. (1) The PPEC center shall ensure that there is an effective, quality assurance program to evaluate the provision of patient care.

(2) The quality assurance program shall be ongoing and have a written plan of implementation.

(a) All organized services related to patient care, including services furnished by a contractor, shall be evaluated, semiannually.

(b) Nosocomial infections and medication therapy shall be evaluated.

(c) Evidence of parent(s) or guardian involvement shall be evaluated semiannually.

Section 9. Administration. (1) The administrative structure of the PPEC shall include a policy and procedure manual which reveal all operational aspects of the service.

(2) Personnel policies and procedures shall specify qualifications and required ratios of staff members employed by PPEC and shall include: a current personnel file, positions descriptions, employee benefits, policies for overtime, compensatory time, performance evaluations, termination of employment.

(3) A formal orientation and development program is required for all PPEC employees and staff.

(4) The facility shall be administered on a sound financial basis consistent with good business practice. Financial records which identify all income by source and describe all expenditures by category in such a manner as to be auditable by commonly recognized procedures.

(5) Policies and procedures pertaining to PPEC services shall be available to the public and shall include:

(a) A procedure manual with specifications for each therapeutic intervention shall be available for use by all staff involved in the care of the children; the manual shall be reviewed every six (6) months to assure that procedures conform to prevailing and acceptable treatment modalities.

(b) An admission and discharge register, listing clients admitted by name with identifying information about each and the source from which the child was admitted, the reason for disposition, adequate identifying information and the place to which the individual is to be discharged;

(c) A daily census record;

(d) An accident and incident record;

(e) A complete medical and nursing history shall be maintained for each child;

(f) Periodic review of each child's protocol of care to update the protocol in consultation with other professionals involved in the child's care. Changes in the orders shall be documented and signed by the primary physician;

(g) Prior to a discharge, conferences involving PPEC staff, the primary physician, the parent(s) or guardian(s) and staff of other agencies involved in the patient's care shall be held to discuss postdischarge care and follow-up;

(h) A discharge order written by the primary physician shall be documented and entered in the child's record. A discharge summary, which includes the reason for discharge, shall also be included in the record.

(i) Except in emergency situations, other agencies involved in the care of the patient/family shall be notified prior to the discharge date.

(j) The center shall have linkage agreements through written agreements with providers of other levels of care which may be medically needed to supplement the services available at the center.

(k) The center shall have written policies which assure the reporting of cases of abuse, neglect, or exploitation of children to the Cabinet for Human Resources pursuant to KRS 199.335.

Section 10. Personnel. (1) A board certified pediatrician shall serve as the medical director for the PPEC facility. Responsibilities shall include:

(a) Participation in preadmission planning to establish a protocol of care with the primary physician, parent(s) or guardian(s) and staff of the PPEC center;

(b) Periodic review of services to assure acceptable levels of quality;

(c) Maintenance of a liaison role with the medical community;

(d) Advisement on the development of new programs and modifications of existing programs; and

(e) Assurance that medical consultation shall be available in the event of his/her absence.

(2) A nursing director shall be employed to provide continuous supervision of PPEC services and shall be responsible for daily operations of the facility.

(a) In addition the nursing director shall be responsible for:

1. All services rendered at the center;

2. Personnel management;

3. Organization and implementation of in-service education programs for staff;

4. Assistance to medical director in determining patient eligibility for admission to PPEC;

5. Assurance of adequate nursing representation at preadmission conference; and

6. Supervision of all patient records and documentation of center's activities to assure compliance to rules and regulations.

(b) Credentials and training.

1. Registered nurse with a current license in the state of Kentucky.

2. Nursing services shall be provided within their respective scope of practice pursuant to KRS Chapter 314 and any regulations promulgated thereunder.

3. The nursing director shall have at least two (2) years nursing experience of which six

(6) months shall have been spent in a pediatric intensive care or neonatal intensive care setting during the previous five (5) years.

(3) Staffing.

(a) The PPEC center shall employ nursing and ancillary staff that are necessary to provide the services essential to the center's operation.

(b) There shall be an individual personnel record for each person employed by the center which includes the following:

1. Resume with employee's training and experience;

2. Evidence of current licensure or registration;

3. Reports of all accidents occurring on duty; and

4. Current certification in basic life support.

(c) The following categories of personnel shall be available to the PPEC on an in-house or consultant basis:

1. Developmentalist.

2. [1.] Child life specialist.

3. [2.] Occupational therapist.

4. [3.] Physical therapist.

5. [4.] Speech pathologist.

6. [5.] Social worker.

Section 11. In-service Training for Staff/Parents and Guardian(s). (1) Monthly staff development programs appropriate to the category of personnel shall be conducted to maintain quality patient care.

(2) All staff development programs shall be documented.

(3) All personnel shall be expected to maintain current certification in basic life support.

(4) Each new employee shall participate in orientation to acquaint the employee with the philosophy, organization, program, practices, and goals of the PPEC facility.

(5) A comprehensive orientation to acquaint the parent(s) and/or guardian(s) with the philosophy and services shall be provided at the time of the child's placement in the PPEC.

(6) Staff development programs shall be provided to:

(a) Facilitate the ability of the staff to function as a member of an interdisciplinary team which includes health professionals and the parent(s) and/or guardian(s).

(b) Improve communication skills to facilitate a collaborative relationship between parent(s) and/or guardian(s) and professionals.

(c) Increase understanding the effects childhood illness has on the child's development and the parent(s) and/or guardian(s).

(d) Increase understanding and coping with the effects of childhood illnesses and shall cover a variety of topics including: issues of death and dying; awareness of services available at the hospital, school, community, state, and professional organizations, and fostering of advocacy skills.

(e) Develop case management skills to assist the family in setting priorities and planning and implementing the child's care at home.

(f) Provide training in the implementation of new technology.

(g) Develop a comprehensive protocol for care which includes the medical, nutritional, developmental and psychosocial needs of medically/technologically dependent children.

(h) Prepare for management of emergency situations.

Section 12. Physical Environment. (1) The building shall be suitable for the purpose intended and should maintain a minimum of sixty (60) square feet of space per child, exclusive of kitchen, bathroom, storage areas, stairways, unfinished basements and attics.

(2) The ventilation system shall be designed and balanced to provide the general pressure relationships shown in Table 1, Section 14 of this regulation.

(3) The lighting levels for the facility shall comply with the requirements in Table 2, Section 14 of this regulation.

(4) Plumbing approval. Prior to licensure and relicensure, all specifications shall be approved by the Kentucky Division of Plumbing, Department of Housing, Buildings and Construction.

(5) Transportation. Emergency transportation to a hospital (with a pediatric unit) shall be achieved in ten (10) minutes or less.

(6) Unless medically contra-indicated, the facility shall be maintained as a temperature range of seventy-two (72) degrees to eighty (80) degrees Fahrenheit.

(7) [(1)] Accessibility. The PPEC shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(8) [(2)] Fire safety. The PPEC shall be approved by the Fire Marshal's office before licensure and relicensure is granted by the licensure agency.

(9) [(3)] Housekeeping and maintenance services.

(a) Housekeeping. The center shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

(b) Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

1. The center shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair.

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair.

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

4. A pest control program shall be in operation in the centers pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

5. Sharp wastes, including needles, scalpels, razors or other sharp instruments used for patient care procedures shall be segregated from other wastes and aggregated in puncture resistant containers immediately after use. Needles and syringes shall not be recapped, cut, dismantled, or destroyed after use, but shall be placed intact directly into a puncture resistant container. The containers of sharp wastes shall either be incinerated, on site or off site, or rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both

the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

6. The center shall establish a written policy for the handling and disposal of all infectious, pathological, and contaminated waste if the center generates them. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

a. Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness. A bag, when full, shall not exceed twenty-five (25) pounds. All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the center from which the waste is being removed and shall be attached to the bag in a conspicuous manner.

b. 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.

Section 13. Emergency Procedures. (1) A copy of the current annual fire inspection report, shall be on file with the licensing agency.

(2) There shall be a working telephone, which is neither locked nor a pay station, in the center.

(3) Emergency telephone numbers shall be posted on or in the immediate vicinity of all telephones.

Section 14. Appendix.

TABLE 1 - PRESSURE RELATIONSHIPS AND VENTILATION FOR PPEC CENTERS

Area Designation	Pressure Relationship to Adjacent	Minimum Air Changes of Outdoor Air Per Hour	Minimum Total Air Changes Per Hour
Patient room	0	1	4
Patient area corridor	0	2	4
Treatment room	0	2	4
Physical therapy and hydrotherapy if applicable	N	2	-
Dining and recreation areas	0	2	4
Soiled workroom	N	2	4
Clean workroom	P	2	4
Toilet room	N	-	10
Bedpan room if applicable	N	-	10
Bathroom	N	-	10
Janitor's closet	N	-	10
Linen and trash chute rooms	N	-	10
Food preparation center	0	2	10
Dishwashing area	N	-	10
Dietary day storage	0	-	2
Laundry, general	0	2	10
Soiled linen sorting and storage	N	-	10
Clean linen storage	P	2	2

P=Positive N=Negative 0=Equal -=Optional

TABLE 2 - LIGHTING LEVELS FOR PPEC CENTERS

Area	Foot-candles*
Administrative and lobby areas, day	50
Administrative and lobby areas, night	20
Corridors and interior ramps	20
Corridor night lighting	3
Dining area and kitchen	30
Doorways	10
Exit stairways and landings	5
Janitor's closet	15
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Patient care unit (or room), general	10
Patient care room, reading	30
Recreation area (floor level)	50
Stairways other than exists	30
Toilet and bathing facilities	30
Utility room, general	20
Utility room, work counter	50

*Minimum on task at any time

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, M.D., Secretary
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FILED WITH LRC: September 5, 1989 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Amended After Hearing)

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 be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised July 1, 1989 [December 15, 1988], which is incorporated 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). The Kentucky Medical Assistance Program Inpatient Hospital 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 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 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 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 as defined in subsection (9) of this section, except as specified in this subsection and the upper limit is established at 115 percent for those mental hospitals serving a disproportionate number of poor patients as defined in subsection (9) of this section. 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, but, effective January 1, 1989, such amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility.

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in Section 4112(b) and (d) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) and those hospitals which may not meet such criteria but meet the criteria specified in Section 4112(d) of OBRA 87 and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and mental hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals; and

4. Effective with regard to services provided on or after September 1, 1988, hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days.

(b) The upper limit for payments for hospitals in Kentucky is set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with Section 4112(c) of OBRA 1987, the minimum payment adjustment and actual payment adjustment will be computed in the following manner:

1. All hospitals determined to be disproportionate share hospitals shall be entitled to a minimum payment adjustment equal to one (1) dollar as an addition to the hospital payment rate computed using usual upper limits; and for hospitals with Medicaid utilization in excess of one (1) standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, a further payment adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid utilization in the hospital which is in excess of utilization at the one (1) standard deviation level.

2. Hospitals meeting the additional criteria as shown in paragraph (a) of this subsection shall have their hospital payment rate computed using usual upper limits. The payment adjustment currently applicable for such hospitals shall then be computed and compared with the minimum payment adjustment specified in paragraph (b)(1) of this subsection and the actual payment adjustment added to the payment rate shall be the greater of the two (2) adjustment amounts unless the payment rate specified in subparagraph 3 of this paragraph is applicable.

3. Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1989 to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay beyond the date of discharge for the mother of the child), the payment rate shall be set at 125 percent of the uncapped allowable per diem cost, without regard to length of stay or number of admissions of the infants.

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

(11) 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.

(12) 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. (1) Participating out-of-state hospitals 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 except as specified in subsection (2) of this section. [Professional costs (i.e., physician fees) shall be paid on the basis of the usual and customary charges of the provider.]

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1989 to infants under the age of one (1), participating out-of-state disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays) shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1), without regard to length of stay or number of admissions of the infants.

(3) Professional costs (i.e., physician fees) for all covered days of stay shall be paid on the basis of the usual and customary charges of the provider.

[Section 6. The amendments to this regulation shall be effective with regard to payments for services rendered on or after July 1, 1988, except as specified in Section 4 of this regulation.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
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CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Amended After Hearing)

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) "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. Hyperalimentation, when used as the total source of nutrition for a resident, is included as a drug cost.

(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.

(14) Effective October 1, 1988, "skilled nursing facility with a mental retardation specialty (SNF/MRS)" means a skilled nursing facility in which at least seventy-five (75) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

Section 2. 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. 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 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 December 20, 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. 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 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, 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 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 [as of []on or after[]] January 1, 1989 (with costs to include, through June 30, 1991, [plus] the adjustments for nurse aide training and universal precautions)[, and shall remain at that amount through June 30, 1991; effective July 1, 1991, the hospital based SNF upper limit shall be the same as the upper limit for all other nursing facilities] [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]. For a skilled nursing facility with mental retardation specialty, effective with regard to services provided on or after October 1, 1988, the upper limit shall be set at 120 percent of the maximum payment for freestanding skilled nursing facilities. For skilled nursing facility Medicaid certified units providing preauthorized specialized rehabilitation services for persons with brain injuries, the all inclusive payment rate shall be usual and customary actual billed charges up to a maximum of $360 [335] per diem. 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. To accomplish federally mandated program improvements, effective July 1, 1989, and continuing through June 30, 1991, the allowable per diem cost for each SNF or ICF shall include one (1) dollar and twenty (20) cents for nurse aide training and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control, and ICFs shall be paid an additional four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement. **For skilled nursing facilities or intermediate care facilities caring for patients with care needs associated with highly infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphlococcus aureus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immuno-deficiency virus (HIV), the payment rates shall be usual and customary actual billed charges up to a maximum of ninety-five (95) dollars and seventy-five (75) dollars per diem for SNFs and ICFs, respectively, for the qualifying patient with these care needs.** [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.]

(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;

(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 Intermediate 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 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.

(f) Effective with regard to services provided on or after October 1, 1988, skilled nursing facilities with a mental retardation specialty (SNF/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 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 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 records (in a form acceptable to the cabinet) which 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 or expansions will be made on a prospective basis in the context that if 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 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 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 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) 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 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 be in the skilled nursing facility bed awaiting placement to an intermediate care bed; and

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

Section 5. 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 7-1-89 [7-1-88])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$36.99 & below [$32.99 & below]	$.92	$.58
37.00 - 37.99 [33.00 - 33.99]	$.86	$.50
38.00 - 38.99 [34.00 - 34.99]	$.78	$.41
39.00 - 39.99 [35.00 - 35.99]	$.70	$.32
40.00 - 40.99 [36.00 - 36.99]	$.61	$.21
41.00 - 41.99 [37.00 - 37.99]	$.51	$.09
42.00 - 43.78 [38.00 - 38.61]	$.35	-

Maximum Payment $43.78 [38.61]

(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 7-1-89 [7-1-88])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$49.99 & below [$43.99 & below]	$.92	$.58
50.00 - 51.99 [44.00 - 45.99]	.86	.50
52.00 - 53.99 [46.00 - 47.99]	.78	.41
54.00 - 55.99 [48.00 - 49.99]	.70	.32
56.00 - 57.99 [50.00 - 51.99]	.61	.21
58.00 - 59.99 [52.00 - 53.99]	.51	.09
60.00 - 62.32 [54.00 - 56.07]	.35	-

Maximum Payment $62.32 [56.07]*

*The maximum payment for hospital based

skilled nursing facilities is set at $77.90 [75.69 effective July 1, 1988 and $70.09] effective July [January] 1, 1989.

(d) Cost incentive and investment schedule for skilled nursing facilities with mental retardation specialty:

(Effective 7-1-89 [10-1-88])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$56.99 & below [$53.99 & below]	$1.38	$.87
57.00 - 59.99 [54.00 - 55.99]	1.29	.75
60.00 - 62.99 [56.00 - 57.99]	1.18	.62
63.00 - 65.99 [58.00 - 59.99]	1.06	.47
66.00 - 68.99 [60.00 - 61.99]	.92	.31
69.00 - 71.99 [62.00 - 63.99]	.76	.13
72.00 - 74.78 [64.00 - 67.28]	.53	-

Maximum Payment $74.78 [67.28]*

(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 and, effective October 1, 1988, skilled nursing facilities with a mental retardation specialty have special requirements that are required to 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. 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 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 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 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 7. Implementation Date. The amendments to this regulation shall be effective with regard to payments for services provided on or after July 1, 1989 [January 1, 1989 except as specified in Sections 1(14), 4(2), 4(8)(f), 5(5)(d) and 5(6) of this regulation and as specified in the incorporated material with regard to respiratory therapy services and services provided by a skilled nursing facility with a mental retardation specialty, which are effective September 1, 1988 and October 1, 1988, respectively].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 5, 1989
FILED WITH LRC: September 5, 1989 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH SEPTEMBER 15, 1989

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:020. Classification plan.

RELATES TO: KRS 18A.005, 18A.110
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern the classification plan for all positions in the classified service so that the same qualifications may reasonably be required for and the same schedule of pay equitably applied to all positions in the same job classification. This regulation is to assure uniformity and equity in administering the plan, in accordance with requirements of the statutes.

[Section 1. Preparation of Plan. The commissioner shall prepare and maintain a comprehensive position classification plan for classified state employees. The plan shall be based on investigation and analysis of all the duties and responsibilities assigned to each position. and each position shall be allocated to its proper job classification in the classification plan after consultation with appointing authorities. When complete, the classification plan shall include for each job classification an appropriate title and a class specification, including characteristics of the class, examples of duties and responsibilities, and the required education, experience and other qualifications. The plan shall be reviewed at least once every four (4) years.]

[Section 2. Allocation of Positions. (1) Every position shall be allocated to the appropriate job classification by the commissioner, after consultation with appointing authorities and consideration of their recommendations. Every position shall be placed in a specific job classification before final administrative action can be taken on appointments, transfers, promotions, changes in pay-grade status, or payment of salary involving the position. Such allocations become effective only after written approval of the commissioner.]

[(2) Those positions which are sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and which merit approximately equal pay shall be allocated to the same job classification.]

[(3) The commissioner shall allocate new positions to the proper job classification upon receipt of the prescribed forms of statements of duties, responsibilities and requirements of such positions from the appointing authority.]

[(4) The commissioner shall reallocate existing positions when it is determined that they are incorrectly allocated, and there has been no substantial change in duties from those in effect when such positions were last classified. The correction of the classification of an existing position by placement of the position into the job classification that is appropriate for the duties the employee has been and shall continue to perform is known as a reallocation. In all cases of reallocation, the employee in the position when it is reallocated shall serve therein with the corresponding status that he had before the position was reallocated.]

[(a) The appointing authority shall notify an employee in writing whose position is reallocated of the reallocation, of the reasons therefor, and of his right to request reconsideration by the commissioner within ten (10) working days of receipt of the notice, excluding the day he receives notification. A copy of the form for requesting reconsideration shall be attached to the notice.]

[(b) An employee who files a written request for reconsideration of the reallocation of his position with the commissioner shall be given a reasonable opportunity to be heard. The commissioner shall make a determination within sixty (60) days after the request has been filed by an employee. Such determination shall be in writing an shall advise the employee of the reason therefor. A copy of the appeal form shall be attached to the determination. An employee may appeal the determination of the commissioner to the board in accordance with 101 KAR 1:350.]

[(5) The commissioner shall change the classification of an employee when a material and permanent change in the duties or responsibilities of that employee occurs. This type of action is known as reclassification. In all cases of reclassification, the employee shall serve with the corresponding status he had before he was reclassified, providing he meets the qualification requirements for the job classification to which he is reclassified. Where a reclassification diminishes the salary range or level, rank, discretion, or responsibility as defined by the class specifications involved, the appointing authority shall notify the employee, in writing, of the reclassification and the reasons therefor. A copy of the appeal form shall be attached to the notice. An employee may appeal such reclassification in accordance with 101 KAR 1:350.]

Section <u>1.</u> [3.] Interpretation of Class Specifications. (1) Class specifications are descriptive and explanatory. They are designed to indicate the kinds of positions which should be allocated to the various job classifications as determined by their characteristics and duties or responsibilities.

(2) Characteristics of a class are general statements indicating the level of responsibility and discretion of positions in that job classification.

(3) Examples of duties or responsibilities are not to be construed as describing what the duties or responsibilities of any position shall be and are not to be construed as limiting the appointing authorities' ability to take, add to, or otherwise alter the duties and responsibilities of a position. The use of an individual expression or illustration as to duties or responsibilities shall not be regarded as excluding assignment of others not mentioned which are of similar kind or quality.

(4) Minimum requirements are comprehensive statements of the minimum background as to education, experience and other qualifications which will be required in all cases as evidence

of an appointee's ability to perform the work properly.

Section 2. [4.] Official Copy of Class Specifications. (1) The Department of Personnel shall maintain a master set of all approved class specifications. Such specifications shall constitute the official class specifications in the classification plan. The copies of the specification for each job classification shall indicate the date of adoption or the last revision of the specification.

(2) The Department of Personnel shall provide each appointing authority with a set of the class specifications of those job classifications to which positions in his department are allocated and such other job classifications as it sees fit. Class specifications shall be available for inspection by any employee or the public under reasonable conditions during business hours.

Section 3. [5.] Title of Position. The title of the job classification to which a position has been allocated shall be used to designate such position in all budget estimates, payrolls and other official records, documents, vouchers, and communications in connection with all personnel processes. For purposes of internal administration or for any other purposes not involving the personnel processes, any office title, abbreviation, or code symbol may be used in lieu of the class title.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: All appointing authorities and employees in the Executive Department subject to KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None. This regulation repeals regulations superceded by statute by removing duplicative or unauthorized language.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
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: Repeal of redundant language is required by KRS 13A.120.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:030. Compensation plan.

RELATES TO: KRS 18A.030, 18A.110, 18A.165
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service. This regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

[Section 1. Preparation, Approval, and Maintenance of the Plan. (1) After consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet, and after conducting wage and salary surveys of relevant labor markets, the commissioner shall prepare a compensation plan for all classes of positions based on the concepts of internal job equity and external market competitiveness. The plan shall provide pay grades or specific salary rates as appropriate for the various job classifications. Each job classification shall be assigned an appropriate pay grade or rate with consideration given to internal job evaluation data and external market conditions. All rates of pay for job classifications shall be consistent with the functions outlined in the classification plan. Amendments to the pay plan shall be made in the same manner.]
[(2) The plan shall take into account such factors as:]
[(a) The relative levels of duties and responsibilities of various job classifications;]
[(b) Rates paid for comparable positions elsewhere taking into consideration the effect of seniority on such rates; and]
[(c) The state's financial resources.]
[(3) Each employee shall be paid in accordance with the pay grade or salary rate set forth in the pay plan for the job classification in which

he is employed.]

[(4) The plan shall be reviewed annually.]

Section 1. [2.] Appointments. Initial appointments shall be made at the minimum rate of the pay grade established for the job classification unless the commissioner authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the midpoint of the pay grade. Such exceptions shall be based on the outstanding and unusual nature of the applicant's education and/or experience over and above the minimum requirements set for the job classification. Such additional qualifications must be in the same or related area of the job duties of the position to which the appointment is to be made. Employees possessing qualifications similar to the applicant being appointed that are employed in the same job classification, by the same agency, in the same county shall have their salaries adjusted by the appointing authority to the same rate granted in the in-range appointment if that rate is higher than their current salaries.

Section 2. [3.] Reentrance to State Service. (1) Appointing authorities, with the approval of the commissioner, may place reemployed, reinstated, and former employee probationarily appointed at a salary:

(a) Which is the same as that paid at the time of separation from state service if such salary is within the current pay grade;

(b) Higher than that paid at the time of separation from state service due to salary schedule or pay grade adjustments;

(c) In accordance with the standards used for making new appointments; or

(d) Lower than that paid at the time of separation from the classified service if such salary is within the current pay grade.

(2) Former employees who were separated from state service by layoff and who are reinstated or reemployed in the same or a similar job classification within five (5) years from the date of layoff may receive the salary they were receiving at the time of layoff, even if such salary is above the maximum of the pay grade.

(3) Former employees reemployed, reinstated or probationally appointed to a salary:

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

(b) Which equals or exceeds the midpoint of the pay grade may be considered for a probationary increment at the time of completion of the probationary period. If such employee is not considered for an increment upon completion of the probationary period, he shall be considered for an increment at the beginning of the month following completion of twelve (12) months service from the date of reemployment, reinstatement or appointment.

Section 3. [4.] Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a salary increase of not less than five (5) percent upon promotion. In no case shall the employee's salary be below the minimum of the higher grade following promotion. Employees completing a promotional probationary period may receive a five (5) percent promotional increase at the beginning of the month following completion of the probationary period. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the commissioner, may grant upon promotion a ten (10) percent or fifteen (15) percent salary increase over the employee's previous salary. A promotional increase shall not change the employee's regular increment date.

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

(3) Reclassification. An employee who is advanced to a higher pay grade through reclassification shall receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the new pay grade. An employee who is placed in a lower pay grade through reclassification shall receive the same salary he was receiving prior to reclassification.

(4) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position may receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the higher pay grade. An employee who is placed in a lower pay grade through reallocation shall receive the same salary he was receiving prior to reallocation.

(5) Detail to special duty. An employee who is approved for detail to special duty as provided by 101 KAR 2:070, Section 2 [9], may receive a five (5) percent increase upon detail to a higher job classification, except that in no case shall the employee's salary after such increase be below minimum of the higher pay grade.

(6) Reversion.

(a) An employee who is reverted while serving a promotional probationary period following promotion, or following detail to special duty to a higher job classification, shall have his salary changed to the rate received prior to such promotion or detail to special duty and is entitled to all salary advancements and adjustments he would have received had he not left the job classification.

(b) An employee who is reverted to a position in the classified service from a position in the unclassified service shall have his salary changed to the rate received at the time he left the classified service and is entitled to all salary advancements and adjustments he would have received had he not left the classified service.

(7) Pay grade changes. An employee who is advanced to a higher pay grade through a class reevaluation and grade adjustment under Section 6 [9] of this regulation may receive a salary increase of five (5) percent or ten (10) percent except that in no case shall the employee's salary after such increase be below the minimum of the new pay grade.

(8) Other salary adjustments.

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, effective on or after January 3, 1986, may have his salary adjusted upon request by the appointing

authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

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

(b) [(c)] Subject to approval by the commissioner, an appointing authority may request a five (5) percent salary adjustment when a special entrance rate is established under Section 7 [9](3) of this regulation.

(c) Any permanent employee who has served for one (1) year immediately preceding a recommendation for an outstanding merit increase and who has not received an outstanding merit increase within the preceding twelve (12) months is eligible for a five (5) percent outstanding merit increase in his present grade in addition to any other salary adjustments to which he might be entitled if:

1. His acts or ideas have resulted in significant financial savings to the Commonwealth, or to a significant improvement in service to its citizens; or

2. His job performance is outstanding. The appointing authority must submit written justification to the commissioner and the personnel action form must be approved by the appointing authority and the commissioner to be effective. In any fiscal year, an agency with sufficient budgeted funds may grant as many outstanding merit salary advancements as thirty (30) percent of the number of its permanent employees at the close of the prior fiscal year.

Section 4. [5.] Salary Advancements. (1) Probationary increments. Full-time and part-time employees who complete an initial probationary period with satisfactory performance shall be granted an [a probationary] increment at the beginning of the month following completion of the probationary period, except as specified under Section 2[3](3) of this regulation. The service may be provisional or probationary.

(2) Annual increment dates shall [will] be established:

(a) Following completion of an initial probationary period, with satisfactory performance, or following completion of twelve (12) months service from the date of appointment, reinstatement, or reemployment, pursuant to Section 2[3](3) of this regulation.

(b) When an employee returns from leave without pay pursuant to subsection (4) of this section [5(5) of this regulation].

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

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

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Receives an educational achievement award;

(g) Returns from military leave;

(h) Is reclassified; or

(i) Is promoted or receives a promotional increase after completion of a promotional probationary period.

[(4) Annual increment. All employees shall receive statutory annual increments on the employee's regularly scheduled increment date. An employee whose annual increment places his salary above the maximum of the pay grade shall have his annual increment added to his base salary or wages. For purposes of calculating the statutory annual increment: Educational achievement awards, employee suggestion systems awards and overtime and/or compensatory leave payments and performance based payments shall not be added to base salary or wages.]

(4) [(5)] Return from leave without pay. Employees returning to duty from leave without pay shall receive an annual increment when they have completed twelve (12) months of service since the date they last received an annual increment.

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

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

Section 5. [6.] Educational Achievement Award. The participation of an appointing authority in the program for educational achievement awards is contingent upon adequate funding, to be determined by the appointing authority through the budgetary process, for all eligibles within the agency. Upon request of the appointing authority and subject to the approval of the commissioner, a permanent [full-time] employee, with status may receive one (1) lump sum educational achievement award per fiscal year:

(1) For satisfactorily completing outside of work hours 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses, must have been completed after a merit employee initially gained permanent [full-time] status in state government. Employees shall not receive credit for courses taken while on educational leave, for hours paid for by the agency through tuition assistance, or for courses which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than $2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) For receiving outside of work hours an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test. The approved diploma, certificate, or passing score must have been obtained on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test shall receive a lump sum educational

achievement award of ten (10) percent of their annual base salary but not more than $2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test; or

(b) Completed college course work on the undergraduate or graduate level.

(3) To apply for an educational achievement award an employee shall submit the educational achievement request form DPT-10 or its equivalent, demonstrating completion of 260 classroom hours (or the equivalent together with official transcripts or grade reports for the courses completed) [and supporting documentation] to the appointing authority or his designee. In compliance with the standards set forth in [Section 6 of] this regulation, the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval. A lump sum educational achievement award shall not be added to the employee's base salary or wages.

[Section 7. Employee Suggestion Award. An employee may receive a lump sum payment employee suggestion award in accordance with 101 KAR 2:120. Such lump sum payment shall not be added to the employee's base salary or wages.]

Section 6. [8.] Salary Schedule Adjustment. When the commissioner authorizes an adjustment of all grades in the pay schedule, employees who are below the new minimum rates shall have their salaries adjusted at least to the minimum rates of their grades. The commissioner may authorize a salary increase for those employees who are at or above the minimum rate based upon the availability of funds. The percentage of such increase shall be determined by the commissioner and shall be uniform for all eligible employees.

Section 7. [9.] Class Reevaluation and Grade Adjustment. (1) Class reevaluation is the assignment of a different pay grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in pay grade. Whenever it becomes necessary to assign a class a different pay grade due to changes defined in Section 7 [9](1) of this regulation, the commissioner may make a new or different pay grade applicable to a class of positions. Persons currently employed in positions of that class at the effective date of the change in pay grade shall have their salary placed at least at the minimum salary of the higher grade, and may be eligible for a salary adjustment under Section 3[4](7) of this regulation. In no event shall an employee's salary be placed at a rate less than he received prior to the change in the pay grade. Employees in a class assigned to a lower pay grade through class reevaluation shall retain their current salary.

(3) Recruitment difficulties. Whenever the commissioner determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area or for a specific class, he may, at the request of the appointing authority, authorize the recruitment for a class of position at a higher rate in the pay grade, provided that all other employees in the same class of position in the same agency in the same county are adjusted in salary to the same rate.

Section 8. [10.] Paid Overtime. Overtime for which pay is authorized shall be in accordance with 101 KAR 2:100, Section 4, and the Fair Labor Standards Act [101 KAR 3:010, Section 4,] and have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet. Overtime payments shall not be added to base salary or wages.

Section 9. [11.] Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such maintenance shall be treated as part payment. The value of these services shall be deducted from the appropriate salary rate in accordance with a maintenance schedule developed by the commissioner after consultation with the appointing authority and the Secretary of the Finance and Administration Cabinet.

Section 10. [12.] Supplemental Shift Premium. Upon request of the appointing authority, the commissioner may authorize the payment of a supplemental shift premium for those job classifications in which employees are directed to work an evening or night shift. Once authorized, this premium shall apply to those employees directed to work an evening or night shift in a job classification for which the shift premium was approved. However, no employee shall receive a supplemental shift premium subsequent to a transfer to a position that is ineligible for a shift differential premium payment.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: All appointing authorities and employees in the

Executive Department subject to KRS Chapter 18A.

(a) Direct and indirect costs or savings to those affected: Amendments eliminate internal equity adjustments for minimal savings and reinstate outstanding merit increase program.

1. First year: Maximum of 30 percent of 32,000 employees eligible for 5 percent increase. Average salary is $20,000.

2. Continuing costs or savings: $960,000 per year (average).

3. Additional factors increasing or decreasing costs (note any effects upon competition): Will increase or decrease based on salary levels of individuals recommended for award.

(b) Reporting and paperwork requirements: Minor processing of payroll and supporting documents.

(2) Effects on the promulgating administrative body: Processing of payroll and initiation of action for own employees.

(a) Direct and indirect costs or savings: Direct costs estimated at $960,000.

1. First year: $960,000 (estimated).

2. Continuing costs or savings: $960,000.

3. Additional factors increasing or decreasing costs: As salaries rise due to increments (5%) cost of program will increase.

(b) Reporting and paperwork requirements: Constant.

(3) Assessment of anticipated effect on state and local revenues: OMI Program will generate taxable income.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Current internal equity program repealed due to outmoded utility and lack of workable criteria.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: Program needed to restore meaningful employment incentives.

TIERING: Was tiering applied? Yes

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:040. Applications and examinations.

RELATES TO: KRS 18A.030, 18A.110, 18A.120

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110, 18A.150

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern open competitive exams to test the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the commissioner. This regulation is necessary to implement these statutory requirements and to assure uniformity in administering exams.

Section 1. Notices of Examinations. Examinations for entrance to the classified service shall be conducted on an open-competitive basis. For those job classifications in which there is expected to be a considerable and recurring need of eligibles, the commissioner shall establish a recruitment program which shall be both positive and continuous. Under such plan, applications may be accepted at any time and examinations held whenever and wherever the commissioner deems it desirable for the service. For those job classifications for which continuous recruitment is not needed, special announcements will be used. Eligibles will be listed in rank order <u>of score</u> irrespective of date[s] on which the examination was taken. Notice of examinations shall be announced publicly fifteen (15) days prior to opening and may be distributed to public officials, employment service offices, newspapers, radio stations, educational institutions, professional and vocational societies, other media and such other individuals and organizations as the commissioner may deem expedient. The public notice of examination shall specify the title and minimum salary of the job classifications; the minimum qualifications required; the final date on which application will be received; the relative weights to be assigned to different parts of the examination; and all pertinent information and requirements.

Section 2. Minimum Qualifications for Filing. Open-competitive examinations shall be open to all applicants who meet the standards or requirements fixed by the commissioner with regard to education, experience, age, physical condition, and such other factors as may be held to relate to the ability of the candidate to perform with reasonable efficiency the duties of the position.

[Section 3. Previous Experience. In determining whether a state employee meets the minimum requirements for experience required for a job classification, the department shall, in counting state service experience, consider only experience gained during permanent full-time employment.]

Section <u>3.</u> [4.] Filing Applications. (1) All applications shall be made on forms prescribed by the commissioner. Such application may require information concerning personal characteristics, education, experience, references, and other pertinent information. When the nature of the work is such that age limits are necessary, the commissioner after consultation with the appointing authority may approve the age limits, which shall be stated in the examination announcement. All applications shall be signed and the truth of the statements contained therein certified by such signatures. Applicants must meet the minimum qualifications specified in announcements as to education and experience, but in no case shall admittance to the examinations constitute assurance of a passing grade.

(2) For those job classifications for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that applications will be received until further notice.

(3) For those job classifications for which continuous recruitment is not needed, special announcement bulletins will be used. Applicants shall have fifteen (15) calendar days to apply for these special openings. The applications will be processed and those applicants who meet

the minimum requirements will be notified of the testing dates.

[Section 5. Disqualification of Applicants. The commissioner may refuse to examine an applicant, or, after examination, may disqualify such applicant, remove his name from a register, refuse to certify any eligible on a register or may consult with the appointing authority in taking steps to remove such person already appointed if:]

[(1) It is found that he does not meet any one of the preliminary requirements established for the examination for the class of position;]

[(2) He is unable to perform the duties of the class;]

[(3) He has made a false statement of material fact in his application;]

[(4) He has used or attempted to use political pressure or bribery to secure an advantage in the examination;]

[(5) He has directly or indirectly obtained information regarding the examination to which, as an applicant, he was not entitled;]

[(6) He has failed to submit his application correctly or within the prescribed time limits;]

[(7) He has taken part in the compilation, administration, or correction of the examination for which he is an applicant;]

[(8) He has previously been dismissed from a position in the state service for cause or has resigned while charges for dismissal for cause of which he had knowledge were pending;]

[(9) He has been convicted of a felony within the preceding five (5) years and his civil rights have not been restored or he has not been pardoned by the governor;]

[(10) He has been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification; or]

[(11) He has otherwise willfully violated the provisions of KRS Chapter 18A.]

Section 4. [6.] Advance Examinations. Any applicant who does not meet minimum requirements as to education but who will meet these requirements as a result of the completion of further educational work which he has scheduled for the six (6) months following the date of receipt of application, may be allowed to take the examination at the discretion of the commissioner. An applicant taking the examination under this provision shall have his or her name entered on the register up to thirty (30) days prior to completing the educational requirements.

Section 5. [7.] Character of Examinations. Examinations shall be practical in nature, constructed to reveal the capacity of the candidate for the particular job classification for which he is competing and his general background and related knowledge, and shall be rated impartially. The commissioner may use a rating of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness which in his judgment serves the need to discover the relative fitness of applicants.

Section 6. [8.] Conduct of Examinations. (1) Examinations shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.

(2) The commissioner may designate monitors in various parts of the Commonwealth to take charge locally of examinations under instructions prescribed by him, provide for the compensation of such monitors, and make arrangements for the use of public buildings in which to conduct the examinations.

(3) Retest procedures.

(a) For open continuous testing an applicant may be admitted to the same exam or its alternate no more than two (2) times within a regular workweek.

(b) For open continuous testing an applicant shall not be permitted to take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date such test is taken.

(c) Retest procedures for examinations listed on special announcements shall be stated on the bulletin.

(d) An eligible [applicant] who is removed from a register, [under 101 KAR 2:050, Section 6(1)] who fails to make himself available to an appointing authority for consideration or who declines appointment by an appointing authority shall not be allowed to retest for the job class from which removed for six (6) months from the date of removal unless he has been restored for reasons satisfactory to the commissioner or in accordance with the decision of the board on appeal.

Section 7. [9.] Rating Examinations. The commissioner shall determine the rating or standing of applicants on the register for all examinations. Such final rating shall be based upon a weighted average of the various parts of the total examination. All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 8. [10.] Rating Education and Experience. (1) When the rating of education and experience forms a part of the total examination, the commissioner shall determine a procedure for the evaluation of the education and experience qualifications of the applicants. The formula used in appraisal shall give due regard to recency and quality as well as quantity of experience and the pertinency of the education.

(2) The commissioner shall investigate the candidate's educational record form. The commissioner may investigate the candidate's work history. If the results of this investigation bring out information affecting the rating of education and experience, the commissioner may rate the candidate accordingly or make the necessary revision of the rating and so notify the candidate.

Section 9. [11.] Oral Examinations. When an oral examination forms a part of the total examination for a position, the commissioner shall appoint one (1) or more oral examination panels as needed. An oral examination panel shall consist of three (3) or more members who shall be known to be interested in the improvement of public administration and in the selection of efficient government personnel of whom one (1) shall be technically familiar with the character of work in the position for which the applicants will be examined. Whenever

practicable, all candidates for the same job classification who qualify for the oral examination shall be rated by the same oral examination panel. A member of an oral examination panel shall disclose each instance in which he knows the applicant personally and may refrain from rating such applicant.

Section 10. [12.] Notice of Examination Results. Each competitor shall be notified of his final rating as soon as the rating of the examination has been completed. Eligibles shall be entitled to information concerning their relative position on the register upon request and presentation of proper identification.

Section 11. [13.] Adjustment of Errors. An error in the rating of an examination, if called to the attention of the commissioner within thirty (30) days after receipt by the applicant of the notice of examination results shall be corrected by the commissioner provided, however, that such corrections shall not invalidate any certification and appointment previously made.

Section 12. [14.] Special Examinations. Except in the case of an error in the examining of an applicant, no applicant shall be given a special examination unless the board by formal recorded action finds that the applicant's failure to take or complete an examination was due to circumstances entirely beyond the control of the applicant. The board's findings and recommendations shall be recorded in its minutes. No claim for a special examination shall be allowed unless it is filed in writing with the board within fifteen (15) days after the date of the original examination. Any special examination shall be constructed on a pattern similar to, and as extensive as, the original examination. Any such special examination shall not invalidate any certification or appointment previously made.

Section 13. [15.] Examination Records. The commissioner shall be responsible for the maintenance of all records pertinent to examination programs. Applications and other necessary examination records shall be kept during the life of the register.

Section 14. [16.] Job Bank. (1) Job bank is a list of eligible state employees with merit status who wish to be considered for particular job classes. The listing shall accompany competitive register certificates to inform appointing authorities of eligible state employee candidates who are available for internal mobility.

(2) A state employee with merit status who wishes to be considered for the job bank shall submit an application to the Department of Personnel. The Department of Personnel shall review application for eligibility, minimum qualifications and testing requirements.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: All appointing authorities and employees in the Executive Department subject to KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: The amendments to this regulation are technical in nature and repeal language superceded by KRS Chapter 18A as required by KRS 13A.120.
1. First year: None
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No substantive change.
(2) Effects on the promulgating administrative body: No substantive change.
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No substantive change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No
(6) Any additional information or comments: No
TIERING: Was tiering applied? Yes

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:050. Registers.

RELATES TO: KRS 18A.005, 18A.110, 18A.120
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.040, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern the establishment of eligible

lists for appointment and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the commissioner. This regulation is necessary to comply with these statutory requirements.

Section 1. Notification of Register Vacancies. [Responsibility for Maintenance of Registers.] It shall be the duty of the appointing authorities to notify the commissioner as far in advance as possible of vacancies in full-time or part-time classified positions which may occur in the agencies. [The commissioner shall be responsible for the establishment and maintenance of appropriate registers for all full-time or part-time classified positions and for the determination of the adequacy of existing registers.]

[Section 2. Open-competitive Registers. After each open-competitive examination, the commissioner shall prepare a register of persons with passing grades seeking employment in a full-time or part-time classified position. The names of such persons shall be placed on the register in the order of their final ratings, starting with the highest. Registers for job classifications listed on the special announcement bulletins shall be filled no sooner than five (5) days after the final testing date.]

Section 2. [3.] Use of Related Registers. [If a full-time or part-time vacancy exists in a job classification for which there is no appropriate register, the commissioner may prepare a full-time or part-time register for the job classification from one (1) or more existing related registers.] The commissioner shall select registers from job classifications for which the minimum qualifications are comparable to or higher than those required for the job classification in which the vacancy exists. The commissioner may, if appropriate, rerate training and experience on the basis of the minimum qualification required for the job classification in which the vacancy exists.

Section 3. [4.] Duration of Registers. [(1) A register shall expire automatically at the end of two (2) years from the time of its establishment unless the register is extended by the commissioner for a period not to exceed one (1) additional year or terminated by the commissioner.]

[(2) The life of registers for job classifications for which continuous recruitment and examination is conducted shall be indefinite but may be terminated by the commissioner. The names of eligibles shall be added to and removed from such registers on a continuous basis. Normally, the name of an eligible shall not remain on a register for a job classification in the continuous program for longer than two (2) years from the date of its entry on the register. Whenever the name of an eligible is removed from a register, the eligible shall be notified in writing.]

[(3)] When a register becomes so depleted that the preparation of usable certificates for a major portion of the imminent vacancies of the job classification is impracticable, the register shall [will] be considered exhausted. The register which has become exhausted shall be considered expired upon the administration of a superseding examination and the establishment of a register on the basis of that examination. When a register becomes exhausted, the commissioner shall send to each eligible remaining on such register a notification prior to the administration of a superseding examination.

Section 4. [5.] Replenishment of Registers. If the commissioner determines that a register, although not exhausted, is inadequate for the filling of anticipated vacancies, he may announce an open competitive examination for the purpose of replenishing such register.

[Section 6. Removal of Names from the Register. (1) Reasons for removal. The commissioner may, on receipt of authoritative information, remove the name of an eligible from the appropriate full-time or part-time register:]

[(a) If the eligible cannot be located by postal authorities at the last address provided by the eligible;]

[(b) If the eligible responds in writing that he no longer desires consideration for position in that class;]

[(c) If the eligible declines an offer of probationary appointment to the class for which the register was established;]

[(d) If it is shown that the eligible is not qualified or is unsuitable for appointment to the class for which the register is established;]

[(e) If the eligible fails to reply within a period of ten (10) calendar days of the receipt of the written request of the appointing authority for an interview, or fails to appear for an interview which he has scheduled with the appointing authority without good cause;]

[(f) If the eligible accepts an appointment and fails to present himself for duty at the time and place agreed to without giving reasons for the delay satisfactory to the appointing authority; or]

[(g) If the eligible states in writing that he is not available for appointment or does not wish to be considered for appointment.]

[(2) An applicant who is removed from a register under Section 6(1) of this regulation who fails to make himself available to an appointing authority for consideration or who declines appointment by an appointing authority shall not be allowed to be restored to the register for the job class from which removed for six (6) months from the date of removal unless he has been restored for reasons satisfactory to the commissioner or in accordance with the decision of the board on appeal.]

[(3) The names of eligibles who have been considered for a probationary full-time or part-time appointment three (3) times by any one (1) or more appointing authorities and have not been offered employment may be removed from a full-time or part-time register if it is determined they would not be suited to the type of work found in the class for which the register is established.]

[(4) When the Department of Personnel is authoritatively notified that an eligible has accepted a bona fide offer of probationary appointment to any full-time or part-time classified position, effective on a specified date, his name may be removed from the registers for all classes for which the maximum salary is the same or less than that of the class to which he has been appointed.]

[(5) Whenever an eligible's name is removed from a full-time or part-time register for reasons cited in subsections (1), (2) and (3) of this section, the commissioner shall notify, in wri7ing, the eligible of this action and the reasons therefor, together with his right of appeal to the board pursuant to 101 KAR 1:350. A copy of the appeal form shall be attached to the notice. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the commissioner or in accordance with the decision of the board upon appeal.]

[(6) Whenever an eligible notifies the Department of Personnel in writing that he is unavailable for employment or employment consideration, the department may remove the name of that eligible from the appropriate full-time or part-time register without further notification to the person.]

Section 5. [7.] Promotional Register. At the request of the appoint authority, the commissioner shall prepare a register of status employees interested in promotion to a full-time or part-time classified position who meet the minimum requirements and has obtained a passing grade on the competitive promotional examination. The names of such employees shall be placed on the register in the order of their final ratings, starting with the highest. The register shall be certified to agencies for their consideration in filling vacancies from a promotional register.

Section 6. [8.] Full-time or Part-time Reemployment Registers. The commissioner shall prepare reemployment registers [in accordance with 101 KAR 1:330, Section 5].

Section 7. [9.] Job Bank. Job bank is a list of eligible state employees with merit status who wish to be considered for particular job classes. The listing shall accompany competitive register certificates to inform appointing authorities of eligible state employee candidates who are available for internal mobility.

Section 8. [10.] Cooperation with Other Merit Systems. The commissioner may cooperate with the governmental agencies of other jurisdictions whose merit systems operate in conformity with standards comparable to those contained in these regulations. The commissioner may announce and administer joint examinations and establish joint lists from which eligibles shall be certified for appointment in accordance with the provisions of these regulations.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: All appointing authorities and employees in the Executive Department subject to KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: The amendments to this regulation are technical in nature and repeal language superceded by KRS Chapter 18A as required by KRS 13A.120.
1. First year: None
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No substantive change.
(2) Effects on the promulgating administrative body: No substantive change.
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No substantive change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No
(6) Any additional information or comments: No
TIERING: Was tiering applied? Yes

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:060. Certification and selection of eligibles.

RELATES TO: KRS 18A.030, 18A.110, 18A.165
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the establishment of eligible lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the exam. This regulation is necessary to comply with these statutory requirements.

Section 1. Request for Certification of Eligibles. To fill a vacancy by selection of an eligible from a register established on the basis of an open-competitive examination, the appointing authority shall submit a request for certification to the commissioner upon a prescribed form. This requisition may be for one (1) or more positions in the same class, in the same county, and shall indicate the number and identity of positions to be filled and the title of the job classification in which they have been allocated and specify all other pertinent information which the appointing authority and the commissioner deem necessary. The appointing authority shall make such request as far in advance as possible of the date the employee is to begin work.

Section 2. Certification of Eligibles. (1) Upon receipt of a requisition, the commissioner shall certify and submit in writing to the appointing authority the names of available persons eligible for the appointment. If one (1) position is involved, he shall certify and submit from the register for that job classification the names of the persons whose scores are included in the highest five (5) scores earned on the examination, providing the commissioner shall fix a reasonable maximum number of eligibles certified. If more than one (1) vacancy is involved, either in one (1) or more agencies, the commissioner shall certify sufficient additional names for the agencies' consideration in filling the total number of vacancies by procedures to retain orderly consideration of eligibles; however, each appointment must be made from the eligibles with the five (5) highest scores. Scores shall be considered in whole numbers. If the register, established as a result of the open-competitive examination for a specific class, is exhausted, the commissioner shall certify and submit names in accordance with the above procedure [in accordance with 101 KAR 2:050, Section 3]. The life of a certificate during which action may be taken shall be forty-five (45) days from the date of issue unless otherwise specified on the certification. Any appointment made from such certificate during that time shall not be subject to any change in the condition of the register taking place during that period.

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

Section 3. Availability. An eligible may at any time during the life of a register have himself listed as available or not available for appointment to a position of that job classification in any county or counties in the state by filing notice to such effect with the commissioner.

Section 4. Selective Certification. (1) The appointing authority may specify in writing requirements of particular experience, education, or skill when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the particular experience, education, or skill essential for successful performance he may certify in order of rank on the register the names of those persons who possess those qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(2) The appointing authority may specify in writing exceptional requirements of particular characteristics when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the exceptional requirement of the characteristic essential for successful performance, he may certify in order of rank on the register the names of those persons who possess the qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(3) To facilitate the employment of participants in employment programs authorized by federal or state law where the participants are employees of state agencies, the appointing authority may specify in writing that participation in such a program be required for a position. If, after investigation, the commissioner finds that such action is necessary to facilitate the career employment of participants in such a program, the commissioner may certify in order of rank on the register, the names of those persons who have been participants for at least six (6) months in such programs. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

Section 5. Selection. [(1) Written inquiry as to availability must be sent to each eligible certified for appointment unless it is impractical to do so, except that evidence of having sent a written notice to each eligible reported as having failed to reply to the inquiry or unavailable for appointment must be submitted with a report of action on a certification. All supporting documentation of negative action must accompany the returned register certificate.]

[(2) In making appointments from the open-competitive register, the appointing authority shall select for each position a person whose score is included in the five (5) highest scores, exclusive of the names of those persons:]

[(a) Who decline appointment or request that they not be considered for appointment;]

[(b) Who fail to reply within a period of ten (10) calendar days to the written request of the appointing authority for an interview or who do not arrange to report for such an interview within a reasonable time, or who fail to appear for an interview which they have arranged with the appointing authority;]

[(c) Who accept an appointment and fail to present themselves for duty at the time and

place agreed to without giving reasons for the delay satisfactory to the appointing authority;]

[(d) To whom the appointing authority offers an objection in writing based on 101 KAR 2:040, Section 5, which objection is sustained by the commissioner;]

[(e) Who are not available for appointment.]

[(3)] The final selection by the appointing authority shall be reported in writing to the commissioner. At the same time, the appointing authority shall indicate the disposition of the other names listed on the certificate and shall certify to the commissioner the nonavailability of any eligibles passed over for that reason.

[(4) If, in the exercise of his choice, the appointing authority passes over the name of an eligible on a register in connection with three (3) separate appointments which he has made from the register, written request may be made of the commissioner that the name of such eligible be omitted from any subsequent certifications from the same register to the same appointing authority. This request must contain sufficient evidence to indicate the eligible's unsuitable characteristics for an appointment in the job classification for which the register was established. If the commissioner approves such request, either the name of such eligible shall not thereafter be certified to him from that register for other vacancies in that class, or his name will be removed from this register.]

Section 6. Certification from the Promotional Register. Whenever a vacancy is to be filled from a promotional register established as a result of a competitive examination, the commissioner shall certify the names of eligibles in accordance with 101 KAR 2:050, Section 5 [7].

Section 7. Certification of Names from the Reemployment Register. Whenever a vacancy is to be filled from a reemployment register, the commissioner shall certify the names of eligibles [in accordance with 101 KAR 1:330, Section 5].

THOMAS C. GREENWELL, Commissioner

APPROVED BY AGENCY: September 15, 1989

FILED WITH LRC: September 15, 1989 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers

(1) Type and number of entities affected: All appointing authorities and employees in the Executive Department subject to KRS Chapter 18A.

(a) Direct and indirect costs or savings to those affected: The amendments to this regulation are technical in nature and repeal language superceded by KRS Chapter 18A as required by KRS 13A.120.

1. First year: None

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: No substantive change.

(2) Effects on the promulgating administrative body: No substantive change.

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No substantive change.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No

(6) Any additional information or comments: No

TIERING: Was tiering applied? Yes

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:070. Types of appointments and detail to special duty.

RELATES TO: KRS 18A.005, 18A.110, 18A.115, 18A.120

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the various types of appointments, such as probationary, emergency, provisional, reinstatement, and for such other regulations, not inconsistent with KRS Chapter 18A, as may be proper and necessary. This regulation is necessary to comply with these statutory requirements.

Section 1. Filling of Vacancies. All vacancies in the classified service which are not filled by promotion, transfer, or demotion, shall be filled by probationary appointment, reemployment, reinstatement, emergency appointment or provisional appointment.

[Section 2. Probationary Appointment. The appointment to a permanent position in the classified service through certification in

accordance with 101 KAR 2:060 from an open-competitive register shall constitute probationary appointment.]

[Section 3. Provisional Appointment. When a vacancy is to be filled in a position of a job classification for which there are less than three (3) eligibles available for certification, the appointing authority, with the prior approval of the commissioner, may make a provisional appointment to fill the position. A provisional appointee must be certified by the commissioner as meeting at least the minimum qualifications established for the class of position. No such provisional appointment shall be continued longer than six (6) months nor shall successive provisional appointments of the same person be made to the same position.]

[Section 4. Emergency Appointment. The appointment of an employee without regard to the examination requirements of these regulations to any position by reason of a governmental emergency shall constitute an emergency appointment. An emergency appointment may not exceed thirty (30) working days in duration and is nonrenewable. Emergency appointments shall have the prior consent of the commissioner.]

[Section 5. Temporary Appointments. The appointment of a person to a temporary position shall constitute a temporary appointment. Such appointments shall be subject to the prior approval of the commissioner. Each appointee must be approved by the commissioner as meeting at least the minimum qualifications established for the job classification. Such appointment shall be for a specified period of time not to exceed six (6) months and shall not be renewable.]

[Section 6. Reemployment. An employee who has been laid off may be reemployed in accordance with 101 KAR 1:330, Section 5.]

[Section 7. Reinstatement. An employee who has resigned in good standing or who has been ordered reinstated by the board or a court to a position in his former class or a position of like status and pay may be reinstated in accordance with 101 KAR 1:330, Section 4.]

[Section 8. Seasonal Appointment. The appointment of a person to a position that is temporary, that coincides with a particular season or seasons of the year, and that does not exceed eleven (11) months duration shall constitute a seasonal appointment. The applicant must meet the established minimum requirements for the position. Such appointments shall be subject to the prior approval of the commissioner.]

Section 2. [9.] Detail to Special Duty. When the services of a permanent employee are needed in a position within an agency other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with prior approval of the commissioner. For detail to special duty the commissioner may waive the minimum requirements when requested by the appointing authority in writing.

Section 3. [10.] Temporary Overlap. With the prior approval of the commissioner, an agency may place an employee for training purposes or in the best interest of the state service, in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: All appointing authorities and employees in the Executive Department subject to KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: The amendments to this regulation are technical in nature and repeal language superceded by KRS Chapter 18A as required by KRS 13A.120.
1. First year: None
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No substantive change.
(2) Effects on the promulgating administrative body: No substantive change.
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No substantive change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No

(6) Any additional information or comments: No
TIERING: Was tiering applied? Yes

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:090. Service regulations.

RELATES TO: KRS 18A.030, 18A.110
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with KRS Chapter 18A, which govern for the maintenance of employee records, the maintenance of other records and reports in the department, and for other conditions of employment. This regulation is necessary to comply with these statutory requirements.

Section 1. General Provisions. Except as otherwise provided in these regulations, the tenure of an employee with status shall be during good behavior and the satisfactory performance of his duties.

Section 2. Attendance; Hours of Work. (1) The number of hours full-time employees in state offices in Frankfort are required to work shall be uniform for all positions unless specified otherwise by the appointing authority or the statutes.
(2) The normal work day shall be from 8 a.m. to 4:30 p.m., local time, Monday through Friday.
(3) An appointing authority may require [and decide] employees to work hours and work days other than normal including inclement weather schedules if it is in the best interest of the agency.
(4) Employees who work for agencies which require more than one (1) shift or seven (7) days a week operation may be assigned/reassigned from one shift to another and from one post to another or alternate days off by the agency to meet staffing requirements and/or to maintain security or provide essential services of the agency. The employee is required to give reasonable notice in advance of absence from a work station.

Section 3. Work Station. Each employee shall be assigned a work station by the appointing authority. A work station may be changed to better meet the needs of the agency. An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days, provided that such employee is reimbursed for his travel expenses in accordance with regulatory provisions and the appointing authority notifies the employee in writing prior to the effective date of the action. Nothing within this regulation shall be construed as prohibiting an appointing authority from assigning an employee to work in a different site within the county of employment.

Section 4. Dual Employment. No employee holding a full-time position with the Commonwealth may hold another state position except upon recommendation of the appointing authority and the written approval of the commissioner. A copy of such written approval and a statement of the reasons therefor shall be transmitted to the Governor and the Director of the Legislative Research Commission. A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the commissioner.

[Section 5. Minimum Hiring Age. The minimum age for hiring of state employees shall conform to federal and state labor laws, and administrative regulations.]

Section 5. [6.] Resignations. An employee who desires to terminate his service with the state shall submit a written resignation to the appointing authority. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the separation and be filed in the employee's service record in the department. Failure of an employee to give fourteen (14) calendar days notice with his resignation may result in forfeiture of accrued annual leave.

Section 6. [7.] Records and Reports. (1) The commissioner shall prescribe personnel action forms which appointing authorities shall use to report such personnel actions and status changes as he may require. The commissioner shall inform the appointing authorities which personnel actions and status changes must be reported to him. The appointing authority shall provide a copy of a personnel action form to the employee affected by such action.
(2) The commissioner shall maintain a leave record showing for each employee:
(a) Annual leave earned, used and unused;
(b) Sick leave earned, used and unused;
(c) Compensatory leave earned, used and unused; and
(d) Special leave or any other leave with or without pay. Such record shall be documentary evidence to support and justify authorized leave of absence with pay.
(3) The commissioner shall prepare and maintain a record of all employees showing for each employee his name, address, title of position, salary rate, changes in status, transfer, sick leave, annual leave and compensatory leave.

[Section 8. Department Records. All records of the department shall be public records and open to public inspection as provided in KRS 61.870 to 64.884.]

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: All appointing authorities and employees in the Executive Department subject to KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: The amendments to this regulation are technical in nature and repeal language superceded by KRS Chapter 18A as required by KRS 13A.120.
1. First year: None
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No substantive change.
(2) Effects on the promulgating administrative body: No substantive change.
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No substantive change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No
(6) Any additional information or comments: No
TIERING: Was tiering applied? Yes

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:100. Leave regulations.

RELATES TO: KRS 18A.030, 18A.110
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This regulation is necessary to comply with these statutory requirements.

Section 1. Annual Leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, and each part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

A full-time employee must have worked more than half of the workdays in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.
(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year, or upon retirement. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.
(3) Absence due to sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.
(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An

employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

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

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

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

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

(9) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government in the middle of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

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

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

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

(13) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except emergency, per diem and part-time employees who work less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(2) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

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

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

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

(a) Receives medical, dental or optical examination or treatment;
(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;
(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care;
(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;
(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.
(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.
(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform his/her duties. When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit; if there is no such position available, the regulations pertaining to layoff apply. An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.
(8) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:
(a) Any combination of workdays and paid leave used by the employee in within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.
(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.
(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.
(d) Any employee who leaves state government in the middle of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.
(9) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.
(10) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.
(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon appointment and placed to their credit.
(12) In cases of absence due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, Workers' Compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that Workers Compensation Benefits were assigned.
(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.
(14) Supporting evidence.
(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.
(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party plaintiff. This leave

shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

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

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

(3) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average regular rate of pay for the final three (3) years of employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off when practicable. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave, an appointing authority or his designee may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(5) An employee deemed to be "nonexempt" shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(6) An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. An employee's leave balance shall be reduced accordingly.

(7) All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate of pay upon accumulating 200 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(8) All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total hours worked in that week reaches forty (40).

(9) Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime.

Section 5. Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

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

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

(2) An appointing authority, with approval of the commissioner, may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service.

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

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken, including those cases where the employee voluntarily resigns in the interim.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day [in the middle] of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

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

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: All appointing authorities and employees in the Executive Department subject to KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: The amendment in Section 1(10) removes the option of nonmerit employees being reverted to cash in accrued annual leave without regard to the rate at which it was earned.
1. First year: None
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No substantive change.
(2) Effects on the promulgating administrative body: No substantive change.
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No substantive change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No
(6) Any additional information or comments: No
TIERING: Was tiering applied? Yes

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:150. State safety program.

RELATES TO: KRS 18A.030, 18A.110, 18A.155
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110, 18A.155
NECESSITY AND FUNCTION: KRS 18A.110(k) and (l) requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapters 13A and 18A and proper and necessary for development and operation and enforcement of programs to improve work effectiveness of employees in the state service in the area of safety. This regulation is necessary to comply with these statutory requirements.

Section 1. Definitions. (1) State safety program means a program established and administered through the Division of Employee Benefits, Department of Personnel, for the purpose of enhancing and monitoring work conditions for state employees in the executive department who are covered by the state self-insured workers compensation plan.
(2) State safety director means the administrator of the state safety program, designated by the Commissioner of Personnel.
(3) Agency safety representative means the coordinator designated by an appointing authority for each site location to work with the Department of Personnel in implementing the state safety program.

Section 2. Establishment of State Safety Program. (1) A state safety program shall be established and administered through the Division of Employee Benefits, Department of Personnel, and headed by a state safety director.
(2) Appointing authorities shall designate an agency safety representative for each site location.

Section 3. Duties of Agency Safety Responsibilities. (1) Each agency safety

representative shall implement and supervise a safety program, shall attend safety meetings sponsored by the Department of Personnel, shall conduct safety meetings and training sessions for agency employees, shall document preventive safety measures and shall otherwise promote safety of employees.

(2) The agency safety representative may establish agency safety committees, to meet on a regular basis for review of causes of accidents, for inspection of facilities, for development of hazard abatement methods and to assess safety training needs.

Section 4. Duties of Supervisors. (1) Supervisors shall review the safety program with new employees, shall adhere to general safety regulations and procedures, shall maintain safe working conditions, and shall require employees to follow safety regulations and procedures.

(2) Supervisors or designees shall investigate all accidents and shall forward a report on the findings to the state safety director in the Department of Personnel.

(3) Supervisors shall require employees to attend regular safety meetings and training sessions at times to be determined in coordination with the agency safety representative.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: All appointing authorities and employees in the Executive Department subject to KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: This amendment reflects a technical change to include reference to enabling legislation.
1. First year: None
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No substantive change.
(2) Effects on the promulgating administrative body: No substantive change.
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No substantive change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No
(6) Any additional information or comments: No
TIERING: Was tiering applied? Yes

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:160. Kentucky employee assistance program.

RELATES TO: KRS 18A.025, 18A.030, 18A.110, 18A.155
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.025, 18A.030, 18A.110(5)(k), (l), 18A.155
NECESSITY AND FUNCTION: KRS 18A.030 and KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with KRS Chapter 18A, which govern development, operation and enforcement of programs to improve the work effectiveness of employees in the state service including health, welfare, counseling and employee relations. This regulation is necessary to comply with these statutory requirements.

Section 1. Establishment of Kentucky Employee Assistance Program. (1) The Department of Personnel shall establish and administer through the Division of Employee Benefits the Kentucky employee assistance program to coordinate [among] employee assistance programs that exist in state agencies and to supplement them with additional services. Kentucky employee assistance program shall be available to assist employees whose agencies do not have employee assistance programs or to provide alternative services.

(2) Any employee whose job performance is or may be adversely affected by personal problems is eligible to initiate a request for service for himself and family or to receive services for himself and family upon referral to the Kentucky employee assistance program.

(3) Employees shall be entitled to obtain Kentucky employee assistance program services without discrimination or reprisals.

(4) Participation of the employee in Kentucky employee assistance program shall not preclude supervisors from taking disciplinary or corrective action as needed in dealing with job performance problems.

(5) Each appointing authority shall designate an employee assistance program liaison for disseminating information.

Section 2. Referrals. (1) Supervisors may extend to an employee an offer of assistance through Kentucky employee assistance program when the employee's job performance is inadequate.

(2) Employees shall be allowed up to five (5) contacts for assessment or referral on state time to be confirmed by the employee assistance program when referred by a supervisor or on self-referral with supervisor's approval.

(3) Employees shall participate in counseling or treatment on their own time, or take leave as provided by law.

(4) Employee involvement in Kentucky employee assistance program shall remain confidential as permitted by state and federal law, unless the employee authorizes release of specific information to specifically identified persons.

(5) Kentucky employee assistance program services shall be free of charge to employees and their families for information, assessment and referral. The Commonwealth shall not be liable for any treatment costs incurred except as provided through health benefits.

THOMAS C. GREENWELL, Commissioner

APPROVED BY AGENCY: September 15, 1989

FILED WITH LRC: September 15, 1989 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers

(1) Type and number of entities affected: All appointing authorities and employees in the Executive Department subject to KRS Chapter 18A.

(a) Direct and indirect costs or savings to those affected: This amendment reflects a technical change to include reference to enabling legislation.

1. First year: None

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: No substantive change.

(2) Effects on the promulgating administrative body: No substantive change.

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No substantive change.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No

(6) Any additional information or comments: No

TIERING: Was tiering applied? Yes

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 3:040. Unclassified service; classification and compensation plans.

RELATES TO: KRS 18A.155

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.155

NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. Nothing herein shall be construed to preclude the optional use of regulations promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.155 and on behalf of members of state boards and commissions who work on a full-time, salaried basis. This regulation complies with and implements this statutory provision.

Section 1. Classification Plan. (1) The commissioner shall, after consultation with the appointing authorities, prepare and recommend to the Governor a classification plan for adoption. The plan shall be based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. Each position shall be allocated to its proper class in the classification plan after consultation with appointing authorities. The classification plan shall include for each class of position an appropriate title, description of duties and responsibilities, and the required education, experience and other qualifications.

(2) The principles and provisions of 101 KAR 2:020 shall apply to positions in the unclassified service.

Section 2. Compensation Plan. (1) After consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet, develop a pay plan for all aforementioned employees in the unclassified service, taking into account such factors as:

(a) The relative levels of duties and responsibilities of various classes of positions;

(b) Rates paid for comparable positions

elsewhere; and

(c) The state's financial resources.

Such pay plan shall become effective only after it has been approved by the Governor after submission to him by the commissioner through the Secretary of the Department of Finance. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the position in which he is employed.

(2) With the exception of the provision relating to probationary increments, the principles and provisions of 101 KAR 2:030 shall apply to employees and positions in the unclassified service. An employee in the unclassified service who completes the initial six (6) month period following appointment with satisfactory performance may be granted a statutory increment at the beginning of the month following completion of such period.

[(3) Salary adjustments.]

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

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

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

(3) Any permanent unclassified employee who has served for one (1) year immediately preceding the recommendation and who has not received an outstanding merit increase within twelve (12) months is eligible for a five (5) percent outstanding merit increase in his present grade in addition to any other salary adjustments to which he might be entitled if:

(a) His acts or ideas have resulted in significant financial savings to the Commonwealth, or to a significant improvement in service to its citizens; or

(b) His job performance is outstanding. The appointing authority must submit written justification to the commissioner and the personnel action form must be approved by the appointing authority and the commissioner to be effective. In a fiscal year, an agency with sufficient budgeted funds may grant as many outstanding merit salary advancements as thirty (30) percent of the number of its permanent employees at the close of the prior fiscal year.

(4) Physicians, employed as such and pursuant to KRS 64.655, are exempted from the provisions of 101 KAR 2:030, Section 1[2], and may be appointed to any rate within the pay range when justified in writing by the appointing authority and approved by the commissioner.

Section 3. Educational Achievement Award. Upon request of the appointing authority and subject to the approval of the commissioner:

(1) An [A full-time] employee may receive one (1) lump sum educational achievement award per fiscal year for satisfactorily completing outside of work hours, 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses must have been completed after an employee initially served six (6) months in state government. Employees shall not receive credit [approval toward an educational achievement award] for hours taken while on educational leave, for hours paid for by the agency through tuition assistance, or for hours which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than $2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) An employee may receive one (1) lump sum educational achievement award for earning an approved diploma, high school equivalency certificate, or a passing score on the G.E.D. test. The approved high school diploma, certificate, or passing score shall have been obtained by the [a] state employee on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary but not more than $2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test; or

(b) Completed college course work on the undergraduate or graduate level.

(3) To apply for an educational achievement award an employee shall submit supporting documentation to the appointing authority or his designee a DPT Form 10 [. For 260 classroom hours] or its equivalent, demonstrating completion of 260 classroom hours (or the equivalent) together with official transcripts or grade reports for the courses completed. [this documentation shall include the educational achievement request DPT Form-10 (or its equivalent).] In compliance with the standards set forth in this section [6 of this regulation], the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval. [A lump sum educational achievement award shall not be added to the employee's base salary or wages.]

THOMAS C. GREENWELL, Commissioner

APPROVED BY AGENCY: September 15, 1989

FILED WITH LRC: September 15, 1989 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: All appointing authorities and employees in the Executive Department subject to KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 3:050. Unclassified service; promotion, transfer and disciplinary actions.

RELATES TO: KRS 18A.155
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.155
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. Nothing herein shall be construed to preclude the optional use of regulations promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.155 and on behalf of members of state boards and commissions who work on a full-time, salaried basis. This regulation complies with and implements this statutory provision.

Section 1. Promotion. (1) Vacancies may be filled by promotion whenever practicable and in the best interest of the service. Employees in executive policy-making positions serve at the pleasure of the appointing authority.
[(2) A promotion is the filling of a vacancy by the advancement of an employee from a position having a lower minimum salary. Promotion to an executive policy-making position requires prior written approval of the Governor in accordance with KRS 12.050.]
(2) [(3)] Any career employee promoted from a classified to an unclassified position retains his status in the classified service. On separation from the unclassified service, he reverts to a position in that class in which he had status in the agency from which he was terminated if a vacancy in that class exists. If no such vacancy exists in a position of the former class, the statutes (KRS 18A.113 and 18A.1132) [regulation (101 KAR 2:080, Section 2)] pertaining to layoff shall apply. He shall be considered for employment in any vacant position for which he is qualified pursuant to KRS 18A.130 and 18A.135.
(3) [(4)] An employee's promotion to a different agency must be approved by the appointing authority and the commissioner.

Section 2. Transfer. (1) The movement of an employee from one position to another of the same grade having the same salary ranges and the same level of responsibility shall be deemed a transfer. An employee appointed in accordance with KRS 12.050 cannot be transferred. A transfer may be an interagency or intra-agency action. An appointing authority, with written notice, may transfer an employee from one position to another in the unclassified service. An employee may request a transfer. The employee must meet the minimum requirements of the job class to which transferred.
(2) An employee may be transferred between agencies to a position having the same salary range and level of responsibility, with the approval of the commissioner.

Section 3. Demotion. (1) "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range or less discretion or responsibility.
[(2) An employee may be demoted by the appointing authority with the approval of the Commissioner of Personnel. If the demotion is for cause, the employee may appeal to the Personnel Board pursuant to 101 KAR 1:350, Section 15 or KRS 18A.095(9).]
(2) [(3)] If, for personal or other reasons, an employee requests in writing that he be assigned to a position of a lower class, the appointing authority may make such a voluntary demotion. Involuntary demotions shall be intra-agency only.

Section 4. Detail to Special Duty. When the services of a permanent employee are needed in a position within the agency other than the position to which regularly assigned, the

employee may be detailed to that position for a period not to exceed one (1) year with approval of the Commissioner of Personnel. For detail to special duty the Commissioner of Personnel may waive the minimum requirements when requested by the appointing authority in writing.

Section 5. Temporary Overlap. With the prior approval of the commissioner, an agency may place an employee for training purposes, in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days.

Section 6. Separations. [and Disciplinary Actions. (1) General provisions. Except as otherwise provided in these regulations, the tenure of an employee shall be during good behavior and the satisfactory performance of his duties.]

[(2) Layoffs. An appointing authority may lay off an employee whenever he deems it necessary by reason of shortage of funds or work, abolishment of a position, or other material change in duties or organization. The employee shall be notified of the effective date at least fourteen (14) calendar days prior to such effective date and shall be given written notice of the reasons for the layoff. An career employee who has been promoted from the classified service to the unclassified service must be reverted to the classified service in order to be considered for layoff. On separation from the unclassified service, he reverts to a position in that class in which he had status in the agency from which he was terminated if a vacancy in that class exists. If no such vacancy exists in a position of the former class, the regulation (101 KAR 2:080, Section 2) pertaining to layoff shall apply. He shall be considered for employment in any vacant position for which he is qualified pursuant to reemployment procedures and KRS 18A.130 and 18A.135.]

[(3) Dismissals. The appointing authority, upon written notice, may remove an employee for cause, or without cause. If the dismissal is for cause, the employee may appeal to the Personnel Board pursuant to 101 KAR 1:350, Section 15, and the appointing authority must notify the employee in writing of the reasons for the dismissal and of the employee's right to appeal. An career employee who has been promoted from the classified service to the unclassified service and who is dismissed from the unclassified service without cause shall revert to the classified service. On separation from the unclassified service, he reverts to a position in that class in which he had status in the agency from which he was terminated if a vacancy in that class exists. If no such vacancy exists in a position of the former class, the regulation (101 KAR 2:080, Section 2) pertaining to layoff shall apply. He shall be considered for employment in any vacant position for which he is qualified pursuant to reemployment procedures and KRS 18A.130 and 18A.135.]

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

(2) [(5)] Retirement. If an employee is retired, he is considered as separated without prejudice.

[(6) Suspension. An appointing authority, upon written notice stating the reasons therefor, a copy of which shall be sent to the commissioner, may suspend an employee without pay or other compensation as punishment for disciplinary cause. Such a suspension shall not exceed thirty (30) working days during any twelve (12) month period. The twelve (12) month period begins with the first day of the suspension. An employee suspended for cause may appeal to the Personnel Board pursuant to 101 KAR 1:350, Section 15, and the appointing authority must notify the employee in writing of the employee's right to appeal.]

[(7) Disciplinary fines. An appointing authority may impose, as a disciplinary measure, a fine to be computed on the basis of the employee's current salary. Disciplinary fines may not exceed ten (10) days' pay for each occurrence, and may not exceed a total of thirty (30) days' pay in any twelve (12) month period. The employee shall be notified in writing by the appointing authority of the reasons for the action, a copy of which shall be sent to the commissioner. An employee receiving a disciplinary fine for cause may appeal to the Personnel Board pursuant to 101 KAR 1:350, Section 15, and the appointing authority must notify the employee in writing of the employee's right to appeal.]

[(8) Written reprimands. An appointing authority may give an employee a written reprimand as a preliminary disciplinary measure. A copy of the written reprimand shall be placed in the employee's personnel file in the agency and a copy shall be given to the employee, Department of Personnel and Personnel Board. The employee shall be given the opportunity to reply in writing to the written reprimand and to include this reply in his personnel file with the written reprimand. The employee shall be informed of his right to reply at the time the written reprimand is given.]

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel,

Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: All appointing authorities and employees in the Executive Department subject to KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

FINANCE AND ADMINISTRATION CABINET
Board of Registration for Professional Engineers and Land Surveyors
(Proposed Amendment)

201 KAR 18:150. Standards of practice.

RELATES TO: KRS 322.020, 322.290
STATUTORY AUTHORITY: KRS 322.290(2)(f)
NECESSITY AND FUNCTION: To promulgate standards of practice for land surveyors in Kentucky.

Section 1. The term "boundary survey" shall mean a survey for which the primary purpose includes, but is not limited to, the determination of the perimeter of a parcel or tract of land. This determination is to be accomplished by the establishment or reestablishment of the property corners and monuments in order to describe and locate fixed improvements thereon, in order to describe and locate fixed improvements thereon, or to plat the property and either a division or a consolidation thereof, or to prepare a physical description of the property. The land surveyor and the general public must understand that a boundary [land] survey does not establish land ownership. Such a function is the purview of the courts. The land surveyor does perform the important service of marking on the ground what, in his opinion, the Deed of Conveyance purports to transfer. In fact, the land surveyor's marks on the ground constitute the actual survey. Field notes, drawings and descriptions are [merely] the written record of the land surveyor's work. This section of the minimum standards of practice is to govern boundary surveying in the Commonwealth of Kentucky, [as defined by KRS Chapter 322] and any document purporting to represent a boundary survey must conform to these minimum standards. [Any] Failure to comply with these standards on the part of a practitioner may [shall] constitute misconduct, gross negligence or incompetence in the practice of land surveying as defined by KRS Chapter 322.

Section 2. Research. The land surveyor shall endeavor to obtain the necessary land records including adjoiner's deeds, to insure that the proper description of the land to be surveyed has been obtained. The land surveyor shall have the additional responsibility to evaluate all [utilize any] other available data pertinent to the survey [being performed from any other source that is known to them]. Evidence discovered [divulged] by the field survey shall be carefully compared with the completed research in order to establish the boundaries of the land being surveyed. Research as required herein is solely intended for the location of land boundaries and does not include the determination of title or encumbrances.

Section 3. Measurement Specifications. Based upon consultation with the client and their knowledge of local regulations, requirements and conditions, the land surveyor shall determine the appropriate precision required for the subject survey. [Upon completion of the survey, the precision of the actual survey shall be related to the positional tolerance of location of any point/monument incorporated into the survey.]

Section 4. In no case shall the unadjusted linear error of closure of the actual field traverse be less than a minimum ratio of 1:5,000. [(1) Positional tolerance is defined as the maximum distance that any point/monument of the survey may be mislocated with respect to any other point/monument as opposed to its theoretical location, by state-of-the-art equipment, given the location of any one point/monument and the determination of the meridian used for the survey. It represents the radius in feet, from the theoretically correct point.]
[(2) The relative precision shall meet or exceed the following: The true horizontal distance between two (2) points whose positions are stated relative to each other, whether directly or indirectly by calculation, shall not differ from the reported distance by more than 1 part in 2,500 plus 0.10 feet (this standard shall become 1 part in 5,000 plus 0.10 feet as of July 1, 1985).]

Section 5. (1) Monumentation. All corners of the boundary [Every land] survey shall be monumented or witness monumented. Every monument set shall be of a type or character having a degree of permanency consistent with that of the local terrain and physical features. Wherever possible monuments shall be made of a permanent material that makes it possible for the monument to be detected by a device capable of finding ferrous or magnetic objects. Types of acceptable

monuments include, but are not limited to, iron pipes, iron pins, iron rods, re-bars, chiseled crosses, railroad spikes, mine spikes, P.K. nails and drill holes. Wooden stakes shall not be used as monuments. Each iron pipe, iron rod, iron pin or re-bar monument set by a land surveyor shall bear his registration number on a manufactured cap or identifier. [at all boundary corner locations. Every monument set by a land surveyor shall be of a substantial size and shall be made of durable materials and should include an element that makes it possible to detect the monument by means of some device for finding ferrous or magnetic objects. All monuments set by a land surveyor shall bear their registration number on a metallic cap or identifier.]

(2) Existing permanent manmade or natural features are acceptable monuments. Where [Some permanent] manmade or natural features are subject to change, realignment or misinterpretation, [.] such monuments or features shall be "witness monumented."

(3) "Witness monumentation" means [refers to] the setting of an offset monument and is used when it is not possible or practicable to set the actual corner. Whenever witness monumentation is used, it should be placed "on line" if possible and shall be shown on plats and called for in descriptions.

Section 6. (1) Documentation [(descriptions, plats, etc.)]. The monuments noted and left by the land surveyor constitute the actual boundary survey. [However,] Descriptions and plats of boundary surveys are the most frequently [frequent] written records of the survey [given the dignity of publication and recording].

(2) Descriptions. Any description written by a land surveyor for the purpose of defining land boundaries shall be complete and shall accurately describe [accurate and be based upon] the actual boundary [completed field] survey. All descriptions shall contain the following details:

(a) Location in reference to a major physical feature or primary control network;

(b) Reference to its record source [of title];

(c) Metes and bounds of the tract [shall be given] in order;

(d) Description of the [Objects or] monuments marking the corners; [shall be described, and] if any boundary follows some prominent feature of the terrain, that [the] fact shall be stated;

(e) Calculated area of the tract;

(f) Name of land surveyor or firm performing survey; and

(g) Date of survey.

(3) Plats of survey. All final plats of boundary surveys prepared in the Commonwealth of Kentucky must be drawn to scale on durable, dimensionally stable media and clearly contain the following information:

(a) [The] Direction and length of each line; geometrically curved lines must be identified with sufficient curve data to define the curve;

(b) [The] Area of the land [being] surveyed;

(c) [A] Description of all [the] monuments including a notation as to whether found, existing or set;

(d) Reference of at least one (1) corner [referenced] to a corner of the parent tract, or durable physical object, or a primary control network, [(]i.e., state plane coordinates[)];

(e) Names or roads, names of [and] adjoiners and/or subdivision lot designations and record sources as [title references if] discovered in the course of performing the survey;

(f) Encroachments discovered in the course of the survey;

(g) [A] North point or reference meridian and its basis, i.e., true, magnetic, grid, compass, record, state plane; if a magnetic meridian is used, this meridian should be related to objects not affected by this survey;

(h) [A] Vicinity map of sufficient detail to find the land being surveyed, unless the location of the subject property is definitely shown by the plat itself;

(i) [A] Statement as to whether [or not] the directions and distances as shown on the plat have been adjusted for closure;

(j) Statement that the unadjusted error of closure meets or exceeds the minimum linear error of closure ratio established herein [A statement as to the basis of the reference meridian used to determine the directions of survey lines. If a magnetic meridian is used, this meridian should be related to objects not effected by this survey];

(k) Statement indicating method of survey used, i.e., parallel offsets, direct on-line, radial, random traverse;

(l) Any cemetery that is discernible or of notice during the performance of the field survey or the required research;

(m) [(k) The] Dated signature and seal of the land surveyor responsible for the survey;

(n) [(l)] Written and graphic scale;

(o) [(m) A] Title block containing the following:

1. Title of the survey.
2. Location of the land [being] surveyed.
3. Name and address of the land surveyor or the surveying firm.

[4. Name and address of client.]

An example of an acceptable plat of survey is incorporated by reference hereto.

Section 7. (1) Miscellaneous. Working drawings and/or unfinished plats [Preliminary plats and/or other nonrecordable documents] - All working drawings [preliminary plats] or unfinished plats [other nonrecordable documents] shall be marked as to their intended use. These documents should not be sealed; example markings would be "PRELIMINARY - NOT FOR RECORDING OR LAND TRANSFER."

(2) Partial boundary surveys - When a client desires only a portion of his property to be surveyed, and this portion can be clearly isolated from the remainder of the property without affecting the interests of adjoining owners, these standards shall apply to the survey of only the desired portion. The remainder of a tract, out of which a portion has been surveyed, may be shown on the [a] plat with [of] the portion surveyed out for identification purposes only. [, and] Any subsequent metes and bounds description of that remainder requires a separate survey of that remainder in order to prepare such description.

LARRY S. PERKINS, Executive Director
APPROVED BY AGENCY: July 21, 1989
FILED WITH LRC: September 14, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment to 201 KAR 18:150 shall be held on October 26, 1989, at 1:30 p.m., at the Office of the Board, The Kentucky Engineering

Center, 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 21, 1989, 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. The 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: Larry S. Perkins, Executive Director, Kentucky State Board of Registration for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry S. Perkins
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The impact of the regulation will affect all land surveyors equally.

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

301 KAR 2:044. 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
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 7 [8] through October 30 [31]; December 1 through December 6.
(2) Woodcock: October 1 through December 4.
(3) Common snipe: October 1 through December 4.
(4) Wood [Experimental September] duck: September 6 [7] through September 10 [11].

Section 2. Limits.

Species	Bag Limits	Possession Limits
Doves	15	30
Woodcock	5	10
Common snipe	8	16
[Experimental September] Wood ducks	[*]2	[*]4

[*Daily bag limit shall be two (2) wood ducks.] 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 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 7 [8] through October 30 [31]; from sunrise to sunset during the period December 1 through December 6.
(2) Common snipe and woodcock: from one-half (1/2) hour before sunrise to sunset.
(3) Wood [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 7 [8] through October 13 [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 7 [8] through October 13 [14] 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 7 [8] through October 13 [14] 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: postwide from September 1 through September 22 and December 1 through December 4. [16, September 17 through October 12] On designated areas only from October 7 through October 30. [November 24 through December 9; December 10 through December 11 on designated areas only as announced by Fort Campbell Hunting and Fishing Unit.]
(b) Woodcock [and snipe]: postwide from November 23 [24] through December 8 and January 4 through January 29. On designated areas only from December 9 through December 31 [4].
(c) Snipe: postwide from September 1 through September 22, November 23 through December 8 and January 4 through January 29. On designated areas only from December 9 through December 31.
(d) [(c)] September wood duck: September 6 [7] through 10 [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 west of KY 1496 and east of the area formed by the line created by Bruin Creek and that section of the Little Sandy River [and on Bruin Creek portions of] (Grayson Lake) extending north from the confluence of Bruin Creek; 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 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: August 15, 1989
FILED WITH LRC: August 15, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 26, 1989 at 2 p.m. at the Department of Fish and Wildlife Resources, Frankfort, Kentucky in the Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by October 21, 1989, 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. The 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: Mr. Lauren E. Schaaf, Director of Wildlife, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
(1) Type and number of entities affected: An estimated 90,000 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 waterfowl stamp if hunting waterfowl. Indirect costs would be determined by the hunter, depending on 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 exempt by regulations. Waterfowl hunters would be required to possess a $12.50 federal migratory bird hunting and conservation stamp and a $5.25 state waterfowl stamp.
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: Randomly selected waterfowl hunters will be asked to report their hunting success by completing and mailing a Kentucky Waterfowl Survey in a postage paid envelope.
(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 enforcement of the regulation.
1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $140,000.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The results of the waterfowl harvest survey will be tabulated and reported to the U.S. Fish and Wildlife Service in accordance with experimental hunting season agreement.
(3) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip.

The average migratory bird hunter in Kentucky will expend about $70 a season on food, lodging, transportation and equipment. This will add about $6,300,000 to the income of local businesses.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of 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? No. Only one class of citizen, the hunter, is impacted by this regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20 / Federal Register / Vol. 54, No. 133 / Thursday, July 13, 1989.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Woodcock - season frameworks between September 1, 1989, and February 28, 1990, with a 65 day maximum season. Bag limits may be a maximum of 5 per day with 10 in possession. Wood duck - season frameworks allow 5 days in September. Bag limits may be 2 daily with 4 in possession. Dove - season frameworks allow either 70 or 60 days between September 1, 1989, and January 15, 1990. Bag limits may be either 12 per day with 24 in possession for the 70 day season or 15 per day with 30 in possession for the 60 day season.

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

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.

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

301 KAR 2:140. Seasons for wild turkey.

RELATES TO: KRS 150.010, 150.025, 150.092, 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, second Wednesday in April for nineteen (19) consecutive days in Ballard, Bell, Boyle south of Highway 37 and west of Carpenter Fork Road, Bullitt east of I-65 and south of Highway 480, Butler east of Green River Parkway, Caldwell east of Highway 139, Calloway south of Highway 94 and east of Highway 641, Casey west of Highway 127, Christian, Harlan, Hopkins south of Highway 70, Larue north of Highway 84, Letcher, Livingston south of the Cumberland River, 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, Trigg south of Highway 68. [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.]

(2) Zone B, second Wednesday in April for seven (7) consecutive days in Adair north of the Cumberland Parkway, Allen east of Highway 31E, Anderson west of Highway 127, Boyd south of

I-64, Breathitt east of Highway 15 and south of Highway 30, Breckinridge south of Highway 60 and west of Highway 259, Carroll west of the Kentucky River, Carter north of I-64, Grayson west of Highway 259, Greenup west of Highway 7, Hancock east of Highway 69, Hart south of Highway 88 and west of I-65, Henderson west of Highway 41, Jackson north of Highway 30, Knott north of Highway 80, Laurel west of I-75, Lewis east of Highway 59, Lyon south of I-24, Marshall southwest of Highway 68, McCreary south of Highway 92 and west of Highway 27, Meade northwest of Highway 79, Muhlenberg south of the West Kentucky Parkway, Owen west of Highway 127, Perry north of Highway 80 and east of Highway 15, Pulaski south of Highway 80 and east of Buck Creek, Rowan north of I-64, Russell west of Highway 127 and south of Highway 92, Trimble east of Highway 421, Union, Warren southwest of the Green River Parkway and northwest of Highway 80, Wayne southeast of Highway 90 and northwest of Highway 92, Webster east of Highway 41A. [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) Fall either sex archery only season from October 1 through October 31 in Ballard, Bullitt east of I-65 and south of Highway 480, Butler east of Green River Parkway, Caldwell east of Highway 139, Christian, Hopkins south of Highway 70, Larue north of Highway 84, Logan west of Highway 431, Nelson west of Highway 31E.

(4) [(3)] 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) turkeys with visible beards per hunter per spring season shall 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.

(2) No more than one (1) turkey shall be taken in the fall.

(3) No more than three (3) turkeys shall be taken in any calendar year.

Section 3. Requirements and Restrictions. (1) The use of dogs is prohibited.

(2) All turkey hunters shall 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 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.

(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 or possessed while turkey hunting. Only Number 4 shot or smaller shall be used. Shot larger than Number 4 or slugs shall not be possessed while turkey hunting.

(6) 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) 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 shall [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 shall [must] be retained in the hunter's possession until the turkey is processed. A completed state or Land Between the Lakes game check card shall be attached to and remain with any turkey taken to a taxidermist. Turkeys shall be checked before being transported out of the state.

(8) Turkeys may be taken with the aid of decoys. Live turkeys shall not be used as decoys.

(9) Turkeys shall 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) Turkeys shall not be hunted from boats.

(11) All hunters less than eighteen (18) years of age shall be accompanied by an adult and shall remain under control of that adult at all times. All turkey hunters born after 1972 shall have completed a hunter safety course and shall 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 shall [must] check turkeys at French Range Building 9333 [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 11, 12, 14, 15, 16, 18 through May 1 [19 through May 7].
(b) Wild turkey shall [may] be taken only in designated areas.
(c) All hunters shall check in and out, shall check any turkey before leaving Land Between the Lakes and shall affix an LBL tag to the carcass. State game check cards are not required.
(d) Shooting hours: daylight hours only.
(e) Bag limit: one (1) turkey per season.
(3) Reelfoot National Wildlife Refuge located in Fulton County.
(a) Season: quota hunt April 6, 7 and [,] 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 7 [8] through May 7 with no hunting permitted on Tuesdays or Wednesdays.
(b) Permit. A post combination hunting-fishing permit is required.
(c) Shooting hours: daylight hours only.
(d) Bag limit: one (1) turkey per season.
(5) Blue Grass Ordnance Depot Activity located in Madison County. Season: second [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. April 11 through 30 [Third Wednesday in April for fourteen (14) consecutive days] and either sex, October 1-31. Hunters must check in and check out daily. Bag limit: one (1) turkey per season.
(9) Robinson Forest Wildlife Management Area in Breathitt and Knott counties is closed to turkey hunting.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman
APPROVED BY AGENCY: September 12, 1989
FILED WITH LRC: September 12, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1989 at 9 a.m. at the Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky in the Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1989, 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. The 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: 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 6,000 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 residents) and wild turkey permit ($15.00) 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 6,000 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

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

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

RELATES TO: KRS [Chapter] 224.020, 224.033, 224.060
STATUTORY AUTHORITY: KRS 224.033, 224.045 [(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 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 Parts 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) "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 administrative 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 administrative 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 an areawide waste management plan have been developed with [/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 <u>shall</u> [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<u>, Section 2</u>;

(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<u>, Sections 3 to 9</u>; 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 <u>during</u> [at the time of] testing. Sewers over eighteen (18) inches in diameter shall be tested by the exfiltration method<u>, or</u> [and/or] smoke testing<u>, or both,</u> 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) <u>If</u> [Should] the cabinet <u>denies</u> [deny] a construction permit, the fee for the

construction permit shall [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
Intermediate Facility	$ 900
Small Facility	$ 450
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) 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 the effective date of this administrative regulation and to applications which are not completed by the effective date of this administrative regulation. Permit applications which are completed by the effective date of this administrative regulation shall be subject to this section as in effect on December 10, 1985.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on 27 October 1989 at 10 a.m. at the Capital Plaza Tower Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by 22 October 1989, 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. Persons not wishing to attend the public hearing 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: Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William Gatewood
(1) Type and number of entities affected: The previous amendment establishes and revises fees for construction permits for wastewater treatment works. The proposed amendment also allows a fee to be charged to entities which are delegated review responsibility. Entities affected are municipalities, industries, and individuals constructing or seeking to construct a sewage system as defined by KRS 224.005; 110 permits were issued in state fiscal year 1989.
(a) Direct and indirect costs or savings to those affected:
1. First year: Costs for construction permits will be assessed according to the following fee schedule:

FACILITY CATEGORY	PERMIT FEE
Large facility	$1,800
Intermediate facility	900
Small facility	450
Large facility modification or construction	800
Intermediate facility modification or construction	400
Small facility modification or construction	200

If the cabinet delegates review authority to an agency through formal written agreement, the cabinet will assess a $20 fee for issuance of an approval letter to the agency.
2. Continuing costs or savings: The permit to construct is a one-time nonrenewable permit for the construction effort. Each new addition or modification to the system requires another permit and applicable fee. However, modifications can be grouped and permitted together under one fee.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The revision of the fee schedule for wastewater treatment works construction permits is expected to offset most of the cost of processing permit applications for entities that can be charged (industries and non-POTWs).
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Additional reporting and paperwork requirements will result from the processing of receipts to the Kentucky State Treasury for the three new fee categories.
(3) Assessment of anticipated effect on state and local revenues: The revision of the fee schedule for construction permits is expected to have a positive effect on state revenue by offsetting the cost of processing construction permit applications. Local governments are not effected by this amendment.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to revising the fee schedule for wastewater treatment plant construction is no action. This option was rejected because current fee levels are not sufficient to recover all construction permitting costs. The proposed technical corrections can only be made by amending the existing administrative regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: The proposed regulation is not in conflict with existing regulations.
(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions: The proposed regulation is not in conflict with existing regulations.

(6) Any additional information or comments: The proposed amendment includes technical corrections to meet the requirements of KRS 13A.222. See attachments A and B providing information on the costs of operations and income in the Division of Water.

TIERING: Was tiering applied? Yes

Attachment A

CALCULATION OF PAID PERSON HOURS
Source - Division of Water's (DOW) Automated time accounting system

431,654.07	Hours	Total hours recorded by in state fiscal year (SFY) 1989 (July 1, 1988 - June 30, 1989).
(2,403.50)	Hours	Leave without pay hours recorded. Not to be considered in cost/person hours calculations.
429,250.57	Hours	Total paid person/hours for DOW employees.

CALCULATION OF PAID HOLIDAY AND LEAVE HOURS
Source - Division of Water's (DOW) Automated time accounting system

20,285.60	Hours	Annual leave
8,870.90	Hours	Compensatory leave
17,575.40	Hours	Paid holidays
75.00	Hours	Military leave
1,613.20	Hours	Other paid leave
2,502.05	Hours	Disaster leave
14,936.20	Hours	Sick leave
173.30	Hours	Snow leave
66,031.65	Hours	Total paid holiday and leave hours
15.38%		Percentage of hours to be added to any program hours to pro-rate paid leave costs

CALCULATION OF COSTS
Source - DOW's Financial report from SFY 1989 (prepared by the Finance Branch of the Division of Administrative Services of the Natural Resources and Environmental Protection Cabinet)

Salaries - DOW General Account - BA00

$5,196,198.42	Regular salaries
25,475.74	Seasonal salaries
10,757.52	Overtime
112,193.33	Compensatory time block payments
$5,344,625.01	Total salaries

Fringe benefits - DOW General Account - BA00

$ 375,348.23	FICA
525,543.49	Retirement
204,691.57	Health insurance
2,470.60	Life insurance
$1,108,053.89	Total fringe benefits

Operating costs - DOW General Account - BA00

$6,570,860.18	Total "personal services" costs (financial statement designation)
(5,344,625.01)	Total salaries
(1,108,053.89)	Total fringe benefits
$ 118,181.28	"Personal services" costs that are actually operating costs
1,475,536.48	Operating expenses - financial report total
(124,577.94)	Interfund operating transfer - nonrecurring costs
(19,773.74)	Intrafund operating transfer - nonrecurring costs
8,076.17	Operating expenses - water operator certification account - BAA0
2,485.95	Operating expenses - waterwell drillers certification account - BAB0
7,293.75	Operating expenses - wastewater operator certification account - BAc0
$1,467,221.95	Total operating costs
	22.7% of salary + fringe
$7,919,900.85	Total recurring (direct) costs of operation for SFY 1989 (Salaries + fringe + operating)

CALCULATION OF COST PER PERSON/HOUR - SFY 1989
Source - Previous calculations, this document

$18.45	Actual cost per person/hour SFY 1989 (Costs/hours)

CALCULATION OF PROJECTED COST PER PERSON HOUR - SFY 1990
(assumes constant person hours in new SFY for calculation)
Source - previous calculations, this document

$5,344,625	SFY 1989 salaries
267,231	Budgeted annual increment costs (5%)
$5,611,856	Total projected salaries SFY 1989
1,234,608	Projected fringe benefit costs (budgeted as 22% of salaries by Department of Personnel)
$6,846,465	
1,554,147	Projected operating costs (22.7%, same as SFY 1989)
$8,400,612	Total projected cost of operation SFY 1990
$19.57	Projected cost per person/hour SFY 1990 (cost/hours)

Attachment B

CALCULATION OF PROGRAM COSTS FOR SFY 1989

$ 13,777.30	Hours	Hours recorded on DOW time accounting system for Wastewater Construction Permit Review program.
2,118.95	Hours	Pro rata share of paid leave hours - 15.83% (from Attachment A)
$ 15,896.25	Hours	Total hours charged to program SFY 1989
X 20.30		Cost per person/year ($18.45 from Attachment A + 10%. Construction permit reviews

are engineering labor intensive. Engineering classifications are paid 10 to 20% higher than the average DOW employee).

$293,285.79 Cost of program SFY 1989

COMPARISON OF PROGRAM COSTS AND COSTS RECOVERED SFY 1989

$ 99,900.00 Fees collected SFY 1989 (Reported by the Information and Data Management section of the Division's Permits Branch).
$293,285.79 Cost of program SFY 1989

($193,385.79) Program costs not covered by fees. Must be paid from General Fund monies.

34.06% of program costs covered by fees.

INDIVIDUAL FEE COST TABLE

CATEGORY	AVERAGE HOURS/ CATEGORY	*COST/ PERMIT	CURRENT FEE
Large facility	85.6	$1,737.68	$1,800
Intermediate facility	46.6	945.98	900
Small facility	23.6	479.08	450
Large facility lines	41.1	834.33	800
Intermediate facility lines	20.0	406.00	400
Small facility lines	10.3	209.09	200

*Based on a cost $20.30/hour (explained above).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation is not required by federal statute or regulation.
2. State compliance standards. See #1 above.
3. Minimum or uniform standards contained in the federal mandate. See #1 above.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? See #1 above.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. See #1 above.

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. Local governments are required to apply for construction permits. However, they are not required to pay a fee for the permit.
3. State the aspect or service of local government to which this administrative regulation relates. Construction of wastewater treatment and collection facilities.
4. How does this administrative regulation affect the local government or any service it provides? This regulation requires review and approval by the Division of Water's engineering staff before wastewater treatment and collection facilities may be constructed.

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

401 KAR 5:010. Certification of wastewater system operators.

RELATES TO: KRS 224.032, 224.135
STATUTORY AUTHORITY: KRS 224.032, 224.033, 224.045 [(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 administrative 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, or both, 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 shall [must] be operated under the supervision of an individual holding a current Kentucky operator's certificate for at least the class of system he or [/]she supervises. Certified operators are required for the operation of all wastewater treatment facilities.

(2) If [In the event] the operator with primary responsibility is not physically present while a system is operating, he or [/]she shall [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 or [/]her of his or [/]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 shall [will] be graded by the board, or by the cabinet and the applicant notified of the outcome. Papers shall [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:

(a) Examination: thirty-five (35) dollars.

(b) Renewal of certificate: thirty-five (35) dollars per biennium. Limited certificates: twenty (20) dollars per year.

(c) Certification by reciprocity: fifteen (15) dollars.

(2) For training sessions conducted by the cabinet: five (5) dollars per contact hour.

(3) Fees accompanying applications will not be returned to those who do not pass the examination.

(4) The cabinet shall [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 or [/]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 shall [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 or [/]her responsible charge.

(3) Certified operators who desire to become certified in a higher classification shall [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 or [/]her knowledge in the performance of his or [/]her duties. No certificate shall [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 provided [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] 224.135 or this administrative regulation 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, except [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 or [/]her knowledge was not used in the performance of his or [/]her duties; or that the operator is incompetent or unable to properly perform his or [/]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 or [/]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 or [/]educational equivalencies the board shall be guided by the following:

(a) In order to establish how much experience will be accepted, the board shall [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, shall [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.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on 27 October 1989 at 10 a.m. at the Capital Plaza Tower Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by 22 October 1989, 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. Persons not wishing to attend the public hearing 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: Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Hornback

(1) Type and number of entities affected: The proposed amendment revises fees for certification of operators of wastewater treatment systems. Entities affected are current certified wastewater treatment system operators; these entities number 2,400 to 2,500.

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

1. First year: Costs for operator certification will be assessed according to the following fee schedule as set by the Wastewater Operators Board of Certification and within the maximums provided for in this regulation:

Examination	$30
Certificate renewal	$20
Limited certificates	$10

Additionally, training provided by the cabinet will vary based on class size, cost of outside trainers, etc., within the maximum set by this regulation and approved by the board.

2. Continuing costs or savings: Continuing costs to certified operators are for required training and biennial revenue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The board can raise the cost of fees within the maximum set by this regulation in 1991.

(b) Reporting and paperwork requirements: No change in existing requirements for application renewal examination, etc.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The revision of the fee schedule for wastewater treatment system operator certification is expected to offset a portion of the costs of processing certification applications and providing training.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: Raising the fee schedule by the board could offset a greater portion of the cost.

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: The revision of the fee schedule for operator certification is expected to have a positive effect on state revenue by offsetting the cost of processing certification applications. Individual operators not their employers (in some cases local governments) are required to pay the fees. Some local governments do pay voluntarily for their employees.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to revising the fee schedule for operator certification is no action. This option was rejected because current fee levels are not sufficient to cover all processing costs. The chosen alternative to raising the fees by the division allows for revision of the schedule with approval by the certification board who represents the operators. The proposed technical corrections can only be made by amending the existing administrative regulation.

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

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

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

(6) Any additional information or comments: The proposed amendments included technical corrections to meet the requirements of KRS 13A.222. See attachments A and B providing information on the costs of operations and income for the program in the Division of Water. Existing Section 8(8) is eliminated as accomplished.

TIERING: Was tiering applied? No. No cost difference exists in administering certification procedures among Operator Classes I through IV.

Attachment A

CALCULATION OF PAID PERSON HOURS
Source - Division of Water's (DOW) Automated time accounting system

431,654.07	Hours	Total hours recorded by in state fiscal year (SFY) 1989 (July 1, 1988 - June 30, 1989).
(2,403.50)	Hours	Leave without pay hours recorded. Not to be considered in cost/person hours calculations.
429,250.57	Hours	Total paid person/hours for DOW employees.

CALCULATION OF PAID HOLIDAY AND LEAVE HOURS
Source - Division of Water's (DOW) Automated time accounting system

20,285.60	Hours	Annual leave
8,870.90	Hours	Compensatory leave
17,575.40	Hours	Paid holidays
75.00	Hours	Military leave
1,613.20	Hours	Other paid leave
2,502.05	Hours	Disaster leave
14,936.20	Hours	Sick leave
173.30	Hours	Snow leave
66,031.65	Hours	Total paid holiday and leave hours
15.38%		Percentage of hours to be added to any program hours to pro-rate paid leave costs

CALCULATION OF COSTS
Source - DOW's financial report from SFY 1989 (prepared by the Finance Branch of the Division of Administrative Services of the Natural Resources and Environmental Protection Cabinet)

Salaries - DOW General Account - BA00

$5,196,198.42	Regular salaries
25,475.74	Seasonal salaries
10,757.52	Overtime
112,193.33	Compensatory time block payments
$5,344,625.01	Total salaries

Fringe benefits - DOW General Account - BA00

$ 375,348.23	FICA
525,543.49	Retirement

204,691.57	Health insurance
2,470.60	Life insurance
$1,108,053.89	Total fringe benefits

Operating costs - DOW General Account - BA00

$6,570,860.18	Total "personal services" costs (financial statement designation)
(5,344,625.01)	Total salaries
(1,108,053.89)	Total fringe benefits
$ 118,181.28	"Personal services" costs that are actually operating costs
1,475,536.48	Operating expenses - financial report total
(124,577.94)	Interfund operating transfer - nonrecurring costs
(19,773.74)	Intrafund operating transfer - nonrecurring costs
8,076.17	Operating expenses - water operator certification account - BAA0
2,485.95	Operating expenses - waterwell drillers certification account - BAB0
7,293.75	Operating expenses - wastewater operator certification account - BAc0
$1,467,221.95	Total operating costs 22.7% of salary + fringe
$7,919,900.85	Total recurring (direct) costs of operation for SFY 1989 (salaries + fringe + operating)

CALCULATION OF COST PER PERSON/HOUR - SFY 1989
Source - Previous calculations, this document

$18.45	Actual cost per person/hour SFY 1989 (costs/hours)

CALCULATION OF PROJECTED COST PER PERSON HOUR - SFY 1990
(assumes constant person hours in new SFY for calculation)
Source - previous calculations, this document

$5,344,625	SFY 1989 salaries
267,231	Budgeted annual increment costs (5%)
$5,611,856	Total projected salaries SFY 1989
1,234,608	Projected fringe benefit costs (budgeted as 22% of salaries by Department of Personnel)
$6,846,465	
1,554,147	Projected operating costs (22.7%, same as SFY 1989)
$8,400,612	Total projected cost of operation SFY 1990
$19.57	Projected cost per person/hour SFY 1990 (cost/hours)

Attachment B

CALCULATION OF PROGRAM COSTS FOR SFY 1989

$ 5,459.80 Hours	Hours recorded on DOW time accounting system for Wastewater Operators Training and Certification Program.
839.72 Hours	Pro rata share of paid leave hours - 15.83% (from Attachment A)
6,299.52 Hours	Total hours charged to program SFY 1989
X 18.45	Cost per person/year (from Attachment A)
$116,226.09	Cost of program SFY 1989

COMPARISON OF PROGRAM COSTS AND COSTS RECOVERED SFY 1989

$ 42,455.00	Fees collected SFY 1989 (from DOW's Financial Status Report)
$116,226.09	Cost of program SFY 1989
($ 73,771.09)	Program costs not covered by fees. Must be paid from General Fund monies.

36.53% of program costs covered by fees.

INDIVIDUAL FEE COST TABLE

CATEGORY	AVERAGE HOURS/ CATEGORY	1 COST/ CERTIFI- CATION	2 MAXIMUM FEE	3 CURRENT FEE
Wastewater exam	2.2	$ 40.59	$ 35.00	$ 30.00
Wastewater certification	2.1	$ 38.75	$ 35.00	$ 20.00

****
1 Based on a cost $18.45/hour (from Attachment A)
2 Maximum fee set by this regulation
3 Current fee as established by the Board of Certification of Wastewater system operators. Board will not meet to reconsider fees until 1991.

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. Some local wastewater treatment systems may voluntarily pay fees for training and certification of their wastewater treatment plant operators.

3. State the aspect or service of local government to which this administrative regulation relates. Wastewater treatment.

4. How does this administrative regulation affect the local government or any service it provides? Effect would be to increase costs to local governments who voluntarily pay their operator's training and certification fees.

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

401 KAR 5:085. KPDES discharge permit and variance fees.

RELATES TO: KRS 224.020, 224.033, 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. [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 2. [1.] Applicability. [The provisions of] This administrative 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 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
Minor industry	2,100 [2,000]
Nonprocess industry	1,000
Large non-POTW	1,700
Intermediate non-POTW	1,500
Small non-POTW	1,000
Agriculture	1,200
Surface mining operation	1,200

(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 shall [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 the effective date of this administrative regulation. Permit applications which are submitted by the effective date of this administrative regulation 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, shall [should] be sent by certified mail. Certified checks or money orders, if used, shall be payable to the Kentucky State Treasurer.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1989 at 10 a.m. at the Capital Plaza Tower Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1989, 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. Persons not wishing to attend the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or to provide written comments on the proposed administrative

regulation to: Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde Baldwin

(1) Type and number of entities affected: The previous amendment revises fees for discharge permits for all sources identified by 401 KAR 5:060, Section 1 except publicly owned sources and sources permitted under a general permit. Entities affected are those industries subject to 401 KAR 5:050 to 5:085; these entities number approximately 2,200. At that time a rounding error resulted in the minor industrial fee being set at $2,000. This amendment revises that fee to $2,100. There are 171 facilities in this category who renew their KPDES permits every 5 years.

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

1. First year: Costs for discharge permits are listed in the following fee schedule:

Major industry	$3,200
Minor industry	$2,100
Nonprocess industry	$1,000
Large non-POTW	$1,700
Intermediate non-POTW	$1,500
Small non-POTW	$1,000
Agriculture	$1,200
Surface mining operation	$1,200

Each fee is for a permit covering five years of authorization to discharge. The annual fee costs are in reality one-fifth of the amount stated in the schedule. As an example, the annual fee for a minor industry which now would be $2,100 divided by 5, or $420. The fees faced by each category of facilities are designed such that facilities pay the costs of processing permits relevant to their own category. No category of facilities face proportionately greater fees to allow another category of facilities to face proportionately lesser fees.

2. Continuing costs or savings: Continuing costs to discharge permittees are determined by the renewal frequency.

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The revision of the fee schedule for KPDES permitted dischargers is expected to offset the costs of processing permit applications.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: The revision of the fee schedule for KPDES discharge permits is expected to have a positive effect on state revenue by offsetting the cost of processing discharge permit applications.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives to revising the fee schedule for KPDES discharge permits are (1) no action and (2) terminating the KPDES discharge program and relegating the responsibilities of the program to the U.S. EPA. The no action option was rejected because current fee schedule levels are not sufficient to cover all processing costs. The program termination option was rejected because administration of surface water discharge permitting by EPA would substantially increase the administration cost to permitted and potentially permitted dischargers and decrease program efficiency. The proposed technical corrections can only be made by amending the existing administrative regulation.

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

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

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

(6) Any additional information or comments: The proposed amendment includes technical corrections to meet the requirements of KRS 13A.222. See attachments A and B providing information on the costs of operations and income in the Division of Water.

TIERING: Was tiering applied? Yes.

Attachment A

CALCULATION OF PAID PERSON HOURS
Source - Division of Water's (DOW) Automated time accounting system

431,654.07	Hours	Total hours recorded by in state fiscal year (SFY) 1989 (July 1, 1988 - June 30, 1989).
(2,403.50)	Hours	Leave without pay hours recorded. Not to be considered in cost/person hours calculations.
429,250.57	Hours	Total paid person/hours for DOW employees.

CALCULATION OF PAID HOLIDAY AND LEAVE HOURS
Source - Division of Water's (DOW) Automated time accounting system

20,285.60	Hours	Annual leave
8,870.90	Hours	Compensatory leave
17,575.40	Hours	Paid holidays
75.00	Hours	Military leave
1,613.20	Hours	Other paid leave
2,502.05	Hours	Disaster leave
14,936.20	Hours	Sick leave
173.30	Hours	Snow leave
66,031.65	Hours	Total paid holiday and leave hours
15.38%		Percentage of hours to be added to any program hours to prorate paid leave costs

CALCULATION OF COSTS
Source - DOW's Financial report from SFY 1989 (prepared by the Finance Branch of the Division of Administrative Services of the Natural Resources and Environmental Protection Cabinet)

Salaries - DOW General Account - BA00

$5,196,198.42	Regular salaries
25,475.74	Seasonal salaries
10,757.52	Overtime

112,193.33	Compensatory time block payments
$5,344,625.01	Total salaries

Fringe benefits - DOW General Account - BA00

$ 375,348.23	FICA
525,543.49	Retirement
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2,470.60	Life insurance
$1,108,053.89	Total fringe benefits

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$6,570,860.18	Total "personal services" costs (financial statement designation)
(5,344,625.01)	Total salaries
(1,108,053.89)	Total fringe benefits
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7,293.75	Operating expenses - wastewater operator certification account - BAc0
$1,467,221.95	Total operating costs 22.7% of salary + fringe
$7,919,900.85	Total recurring (direct) costs of operation for SFY 1989 (salaries + fringe + operating)

CALCULATION OF COST PER PERSON/HOUR - SFY 1989
Source - Previous calculations, this document

$18.45	Actual cost per person/hour SFY 1989 (costs/hours)

CALCULATION OF PROJECTED COST PER PERSON HOUR - SFY 1990
(assumes constant person hours in new SFY for calculation)
Source - previous calculations, this document

$5,344,625	SFY 1989 salaries
267,231	Budgeted annual increment costs (5%)
$5,611,856	Total projected salaries SFY 1989
1,234,608	Projected fringe benefit costs (budgeted as 22% of salaries by Department of Personnel)
$6,846,465	
1,554,147	Projected operating costs (22.7%, same as SFY 1989)
$8,400,612	Total projected cost of operation SFY 1990
$19.57	Projected cost per person/hour SFY 1990 (cost/hours)

Attachment B

CALCULATION OF PROGRAM COSTS FOR SFY 1989

$ 37,503.99 Hours	Hours recorded on DOW time accounting system for the Kentucky Pollution Discharge Elimination System (KPDES) Permitting program.
5,768.11 Hours	Pro rata share of paid leave hours - 15.83% (from Attachment A)
$ 43,272.10 Hours	Total hours charged to program SFY 1989
X 20.30	Cost per person/year ($18.45 from Attachment A + 10%. KPDES permit reviews are engineering labor intensive. Engineering classifications are paid 10 to 20% higher than the average DOW employee)
$798,370.31	Cost of program SFY 1989

COMPARISON OF PROGRAM COSTS AND COSTS RECOVERED SFY 1989

$553,500.00	Fees collected SFY 1989 (Reported by the Information and Data Management section of the Division's Permits Branch)
$798,370.31	Cost of program SFY 1989
($244.870.31)	Program costs not covered by fees. Must be paid from General Fund monies.

69.33% of program costs covered by fees.

INDIVIDUAL FEE COST TABLE

CATEGORY	AVERAGE HOURS/ CATEGORY	*COST/ PERMIT	CURRENT FEE
Major industrial	158.5	$3,217.55	$3,200
Minor industrial	103.9	2,109.17	2,100
Nonprocess wastewater	49.9	1,012.97	1,000
Major POTW	146.8	2,980.04	**
Minor POTW	102.3	2,076.69	**
Large non-POTW	83.9	1,703.17	1,700
Intermediate non-POTW	76.2	1,546.86	1,500
Small non-POTW	48.3	980.49	1,000
Agriculture	***	***	1,200
Surface mining	58.0	1,177.40	1,200

*Based on a cost $20.30/hour (explained above).
**Statutes exempt publicly-owned treatment works from any fees.
***To date no permits for agricultural discharges have been issued so no time accounting data is available. DOW estimates the time to be comparable to that for surface mining permits.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 33 U.S.C. Section 1342 and 40 CFR Part 122.

2. State compliance standards. Standards do not apply to this portion of the KPDES regulation. Standards are in 401 KAR 5:026, 401

KAR 5:029 and 401 KAR 5:031.

3. Minimum or uniform standards contained in the federal mandate. See #2 above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? See #2 above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. See #2 above.

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. Local governments are required to apply for KPDES operating permits. However, they are not required to pay a fee for the discharge permit.

3. State the aspect or service of local government to which this administrative regulation relates. Wastewater treatment operations.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires that any discharger into the waters of the Commonwealth have a discharge permit. Wastewater treatment facilities owned and operated by local governments must comply with this permit requirement.

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

401 KAR 6:300. Water well drillers certification; examination; fees.

RELATES TO: KRS 223.405, 223.425, 223.445 [223.400 through 223.460, 223.991]

STATUTORY AUTHORITY: KRS 223.410, 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 shall [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 shall [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) dollars for each examination administered.

(3) An applicant, upon notification that all requirements have been met for certification, shall remit a certification fee of $100 [250] for initial certification.

(4) The fee for certificate renewal shall be $100 [250] per year.

(5) Certified checks or money orders shall be payable to the Kentucky State Treasurer.

(6) [The provisions of] This administrative regulation shall apply to applications, examinations, and initial certifications submitted on or after the effective date of this administrative regulation. The certificate renewal fee shall become effective upon the beginning of the next certification year after the effective date of this regulation.

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 shall [will] bear as their date of issue July 1 of the appropriate year. Newly issued certificates shall [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 shall [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.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: September 14, 1989

FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1989 at 10 a.m. at the Capital Plaza Tower Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by October 22, 1989, 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. Persons not wishing to attend the public hearing 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: Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Bob Logan

(1) Type and number of entities affected: The proposed amendment revises fees for examination and certification of water well drillers. Entities affected are individuals possessing either two years experience under a certified or licensed driller, or a certificate or license from another state for a period of two years. Ten entities per year are expected to be affected by the examination fee. Approximately 120 entities per year are expected to be affected by the certification fee.

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

1. First year: The advance payment required for each examination increased from 25 to 40 dollars under the current regulation and certification fees increased from $100 to $250. This proposed amendment lowers the certification fee back to $150 reflecting a decrease in cost to the division.

Due to a loss of staff the division was unable to devote as much time to the certification program as had been planned last year. Therefore, the certified operators have faced an increase in cost with a net decrease in services and protection by the division from competition from uncertified operators.

Certified operators who have paid the $250 fee will be given a credit in the amount of the overage above the new proposed fee which they may apply to future renewals, examinations, etc.

2. Continuing costs or savings: Certification renewal must be made annually. After the first year, there are no additional increases in costs or savings to the regulated entities.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None, all water well drillers are equally effected.

(b) Reporting and paperwork requirements: None, annual reporting and paperwork requirement remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The decrease in fee income will have a minimal effect on the administrative body. This effect will increase as groundwater branch moves back toward full staffing. A review of the fees will be made at that time when the division provides improved service and protection to certified operators.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: The revision downward of the permit fee will have a negative impact on state revenues, however, it will be minimal in light of the Division of Water's total budget.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to revising this fee downward was to revise it upward or to do nothing. To revise the fee upward would have been further counter productive and unjustified; and to do nothing was also unjustified in light of the impact the increased fee has had on the number of water well drillers seeking certification. Proposed technical corrections can only be made by amending the existing administrative regulation.

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

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

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

(6) Any additional information or comments: The proposed amendment includes technical corrections to meet the requirements of KRS 13A.222. See attachments A and B providing information on the costs of the program and income in the Division of Water. Existing Section 4(2) is eliminated as confusing.

TIERING: Was tiering applied? No. No stratification for tiering exists in the examination of water well drillers.

Attachment A

CALCULATION OF PAID PERSON HOURS
Source - Division of Water's (DOW) Automated time accounting system

431,654.07	Hours	Total hours recorded by in state fiscal year (SFY) 1989 (July 1, 1988 - June 30, 1989).
(2,403.50)	Hours	Leave without pay hours recorded. Not to be considered in cost/person hours calculations.
429,250.57	Hours	Total paid person/hours for DOW employees.

CALCULATION OF PAID HOLIDAY AND LEAVE HOURS
Source - Division of Water's (DOW) Automated time accounting system

20,285.60	Hours	Annual leave
8,870.90	Hours	Compensatory leave
17,575.40	Hours	Paid holidays
75.00	Hours	Military leave
1,613.20	Hours	Other paid leave
2,502.05	Hours	Disaster leave
14,936.20	Hours	Sick leave
173.30	Hours	Snow leave
66,031.65	Hours	Total paid holiday and leave hours
15.38%		Percentage of hours to be added to any program hours to prorate paid leave costs

CALCULATION OF COSTS
Source - DOW's Financial report from SFY 1989 (prepared by the Finance Branch of the Division of Administrative Services of the Natural Resources and Environmental Protection Cabinet)

Salaries - DOW General Account - BA00

$5,196,198.42	Regular salaries
25,475.74	Seasonal salaries
10,757.52	Overtime
112,193.33	Compensatory time block payments
$5,344,625.01	Total salaries

Fringe benefits - DOW General Account - BA00

$ 375,348.23	FICA
525,543.49	Retirement
204,691.57	Health insurance
2,470.60	Life insurance
$1,108,053.89	Total fringe benefits

Operating costs - DOW General Account - BA00

$6,570,860.18	Total "personal services" costs (financial statement designation)
(5,344,625.01)	Total salaries
(1,108,053.89)	Total fringe benefits
$ 118,181.28	"Personal services" costs that are actually operating costs
1,475,536.48	Operating expenses - financial report total
(124,577.94)	Interfund operating transfer - nonrecurring costs
(19,773.74)	Intrafund operating transfer - nonrecurring costs
8,076.17	Operating expenses - water operator certification account - BAA0
2,485.95	Operating expenses - waterwell drillers certification account - BAB0
7,293.75	Operating expenses - wastewater operator certification account - BAc0
$1,467,221.95	Total operating costs 22.7% of salary + fringe
$7,919,900.85	Total recurring (direct) costs of operation for SFY 1989 (salaries + fringe + operating)

CALCULATION OF COST PER PERSON/HOUR - SFY 1989
Source - Previous calculations, this document

$18.45	Actual cost per person/hour SFY 1989 (costs/hours)

CALCULATION OF PROJECTED COST PER PERSON HOUR - SFY 1990
(assumes constant person hours in new SFY for calculation)
Source - previous calculations, this document

$5,344,625	SFY 1989 salaries
267,231	Budgeted annual increment costs (5%)
$5,611,856	Total projected salaries SFY 1989
1,234,608	Projected fringe benefit costs (budgeted as 22% of salaries by Department of Personnel)
$6,846,465	
1,554,147	Projected operating costs (22.7%, same as SFY 1989)
$8,400,612	Total projected cost of operation SFY 1990
$19.57	Projected cost per person/hour SFY 1990 (cost/hours)

Attachment B

CALCULATION OF PROGRAM COSTS FOR SFY 1989

$ 1,206.70 Hours	Hours recorded on DOW time accounting system for Water Well Drillers Certification program.
185.59 Hours	Pro rata share of paid leave hours - 15.83% (from Attachment A)
$ 1,392.29 Hours	Total hours charged to program SFY 1989
X 18.45	Cost per person/year (Attachment A)
$ 25,687.76	Cost of program SFY 1989

COMPARISON OF PROGRAM COSTS AND COSTS RECOVERED SFY 1989

$ 22,903.03	Fees collected SFY 1989 (division's financial report)
$ 25,687.76	Cost of program SFY 1989
($ 2,784.73)	Program costs not covered by fees. Must be paid from General Fund monies.

89.16% of program costs covered by fees.

INDIVIDUAL FEE COST TABLE

CATEGORY	AVERAGE HOURS/ CATEGORY	*COST/ CERTIFI- CATION	CURRENT FEE
New applications	1.4	$ 25.83	$ 25
Examinations	2.2	$ 40.59	40
Certifications (Initial and renewals)	8.2	$151.29	150

*Based on a cost $18.45/hour (explained above).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation is not required by federal statute or regulation.
2. State compliance standards. See #1 above.
3. Minimum or uniform standards contained in the federal mandate. See #1 above.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? See #1 above.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. See #1 above.

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 39:010. Generator registration 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 fees for the registration of hazardous waste generators.

Section 1. Applicability. This regulation applies to all generators of hazardous waste in Kentucky who are required by Section 3 of 401 KAR 32:010 to register with the cabinet.

Section 2. Annual Registration Schedule and Schedule of Fees for Application for Registration. (1) Generators of hazardous waste who are required by Section 3 of 401 KAR 32:010 to register with the cabinet shall register annually on a schedule determined by the cabinet. All applications for registration as a hazardous waste generator of more than 100 kilograms in a calendar month shall be accompanied by the nonrefundable fee set forth below:
(2) The fee for registration as a hazardous waste generator shall be based on the number of hazardous waste streams generated according to the following schedule:

Number of Waste streams	Registration Fee
1-5	$300
6-10	350
11-15	400
16-20	450
21-25	500
26-30	550
31 or more	600

(3) Modification of registration. If a registrant submits a registration to modify his waste streams the following fees shall apply: [No fee is charged if a registrant modifies his registration by making a name change or change to any other information.]

Number of Waste streams	Registration Modification Fee
1-5	$ 50
6-10	100
11-15	150
16-20	200
21-25	250
26-30	300
31 or more	350

(4) Except as specified in subsection (5) of this section, if a registrant submits a registration to modify any other information, a fee of fifty (50) dollars shall apply.
(5) No fee is charged if a registrant modifies his registration by making a name change.

Section 3. Submittal of Fee. The appropriate fee as established in Section 2(2) through (4) of this regulation shall be submitted to the cabinet with the application for registration. The check shall be made payable to the Kentucky State Treasurer.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted on October 27, 1989 at 10 a.m. (EDT), in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Persons interested in attending this public hearing shall notify in writing at least five days prior to the hearing Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort office of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 27, 1989.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr.
(1) Type and number of entities affected: Approximately 350 full quantity generators and 570 small quantity generators of hazardous waste will be affected by the proposed amendment. The proposed amendment adds a fee of $50 for registration modifications.
(a) Direct and indirect costs or savings to those affected:
1. First year: The first year cost will be based on the number of registration modifications a small or full quantity generator makes in a year. If no changes are made, no cost is incurred. The existing annual registration fee for hazardous waste generators covers the administrative costs of reviewing and updating the information on the registration. The cost for registration and certificate issuance includes technical review of information,

verification of new or changed information by field staff, clerical support, verification of data in EPA's Hazardous Waste Data Management System, maintenance of hard copy files by the state, and file and record reviews. File and record reviews for registrations include determination of the appropriate EPA Identification Number to be issued to the facility. The time required for technical review of a single registration is 13 hours; 9 hours of clerical time are required to process a single registration. The salaries are based on mid-point salaries of each job classification plus 32 percent fringe and overhead. A modification fee has been proposed for any change in registration except for changing the name of registrant. A fee of $50 is proposed based upon personnel costs. The time required for technical review of a modification is two hours. The time for typing, copying, filing and data management is 1.7 hours.

2. Continuing costs or savings: A continuing cost will be incurred if a small or full quantity generator modifies the annual registration. If no change is made, no cost is incurred.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The promulgating agency will experience a savings as the fee will partially cover costs incurred for processing registration modifications. The agency processes an average of 20 registration modifications monthly.

2. Continuing costs or savings: The promulgating agency will experience a continued savings as the fee will partially cover costs incurred for processing registration modifications.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be a direct effect on state revenues from promulgation of this regulation. The fee obtained through this regulation will go directly in the state's agency receipts fund to be distributed to the cabinet. The fees will offset the cost to the cabinet for review of the registration modification and issuance of an amended certificate. There will be no effect on local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed amendment charges a fee for annual registration modifications. Alternative: 1. Less stringent: The dollar amount of the modification fee is based on the cabinet's expenses for reviewing and issuing an amended certificate. To charge less would cause the cabinet to absorb the expense of the modification.

2. More stringent: To charge more would place an unnecessary financial burden on generators.

3. Present proposal: The proposed amendment charges a fee for annual registration modifications.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed amendment.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? Yes. This regulation applies only to full and small quantity generators of hazardous waste.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendment to this regulation requires a fee for all permit modifications except name changes. The federal regulatory system does not include any provision for fees. KRS 224.871 provides that the cabinet shall establish fees for the processing, review, and issuance of certificates and permits.

2. State compliance standards. KRS 224.871 provides that the cabinet shall establish fees for the processing, review, and issuance of certificates and permits. The proposed amendment to this regulation requires a fee for all permit modifications except name changes.

3. Minimum or uniform standards contained in the federal mandate. There is no 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. The annual registration fee and modification fee required of hazardous waste generators in Kentucky is a requirement not found in the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registrants.

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

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 Delisting Fees. (1) A petition to delist a hazardous waste in accordance with Section 1 of 401 KAR 31:060 shall be accompanied by payment of a fee of $6,000 for each hazardous 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 per waste shall accompany the petition to delist.]

(2) The provisions of this regulation shall apply to delisting petitions submitted on or after the effective date of this regulation, and to such petitions which are not complete, as determined by the cabinet, by the effective date of this regulation. Delisting petitions which are complete, as determined by the cabinet, by the effective date of this regulation, 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. 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.

(2) The provisions of this regulation shall apply to applications for exemptions of a hazardous constituent and applications to establish alternate concentration limits submitted on or after the effective date of this regulation, and to such applications which are not complete, as determined by the cabinet, by the effective date of this regulation. Applications for exemptions and applications to establish alternate concentration limits which are complete, as determined by the cabinet, by the effective date of this regulation, 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 be made payable to the Kentucky State Treasurer.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted on October 27, 1989 at 10 a.m. (EDT), in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Persons interested in attending this public hearing shall notify in writing at least five days prior to the hearing Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort office of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 27, 1989.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr.

(1) Type and number of entities affected: This regulation affects hazardous waste generators and hazardous waste management facilities required to monitor groundwater in Kentucky. There are currently 912 generators and 73 storage, treatment and disposal facilities registered with the cabinet.

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

1. First year: There will be no direct or indirect costs or savings to those affected. The proposed amendment clarifies the applicability of delisting by removing the language concerning temporary exclusions. An existing fee of $6,000 is assessed for those owners or operators who generate or handle hazardous waste and who petition the cabinet to delist the waste. This fee is assessed one time for each petition to delist a waste. The technical review of each delist petition is 107 hours. The clerical time is 20 hours. The cost for clerical and technical time is $2,400. The salaries are based on mid-point salaries of each job classification plus 32 percent fringe and overhead. Additionally, a minimum of two samples of the waste must be analyzed at a cost of $1,000 each. The proposed delisted waste stream must be adopted into regulation and a public notice must be issued. If requested, a public meeting must be held. The cost for public notice and regulatory adoption is $1,650. The fees for 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 be the cost of review. The cost to exempt a hazardous constituent or establish an alternative concentration limit are extremely variable and cannot be estimated; therefore, the cabinet will assess a fee of the costs actually incurred.

2. Continuing costs or savings: There are no additional factors increasing or decreasing costs.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The proposed amendments do not increase or decrease reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no direct or indirect costs or savings to the promulgating administrative body.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: The proposed amendment does not increase or decrease reporting or paperwork requirements.

(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative: The proposed amendment to this regulation is a clarification. It removes the reference to temporary exclusions which no longer exist. The proposed clarification ensures that this regulation is consistent with 401 KAR 31:070.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The proposed amendments do not conflict with or overlap or duplicate statute, rules, or government policy.
(a) Necessity of proposed regulation if in conflict: The proposed amendments do not conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed amendments do not conflict.
(6) Any additional information or comments: There is no additional information.
TIERING: Was tiering applied? Yes, this regulation applies to those hazardous waste generators who wish to petition to delist a particular waste or to exempt a hazardous constituent in a permit. KRS 224.871 authorizes the cabinet to promulgate regulations requiring the payment of fees related to the administrative cost.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal regulations do not contain a fee schedule for hazardous waste management. 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.
2. State compliance standards. The proposed amendment to this regulation clarifies the applicability of delisting fees by removing the language concerning temporary exclusions.
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed amendments impose requirements on regulated entities that the federal mandate does not contain. The federal regulations do not provide for a schedule of fees. The proposed amendment, however, is a clarification which removes obsolete language.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 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. The fees imposed by this regulation are used to defray the costs for performing the required review activities. The proposed amendment, however, is a clarification which removes obsolete language.

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

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 the effective date of this regulation, and to such applications which are not complete, as determined by the cabinet, by the effective date of this regulation. Permit applications for treatment, storage, or disposal facilities which are complete, as determined by the cabinet, by the effective date of this regulation, 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. Review Fees. Any owner or operator who submits a permit application for a hazardous waste treatment, storage, or disposal facility or 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 review fee shall be the sum of the unit fees charged for each type of hazardous waste management 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 tank and container unit fee shall be paid once for each different waste and for each different type of tank or container. The unit fees shall be:
(1) Incinerator - $19,400;
(2) Waste piles - $12,200;
(3) Surface impoundments - $14,000;
(4) Tanks - $7,400 [11,000];
(5) Containers - $6,000 [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. RCRA Facility Investigation Fees and Corrective Action Fees. Any owner or operator who submits an application for a treatment, storage, or disposal facility that includes a RCRA facility investigation or corrective action studies or plans, shall submit a RCRA facility investigation corrective action fee upon request from the cabinet. The RCRA facility investigation fee shall be the cost of the review, but shall not exceed $14,500. The corrective action fee shall be the cost of the review, but shall not exceed $29,000.

Section 6. [5.] Submittal of Fees. All fees shall be paid by check or money order made payable to the Kentucky State Treasurer.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted October 27, 1989 at 10 a.m. (EDT), in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Persons interested in attending this public hearing shall notify in writing at least five days prior to the hearing: Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort offices of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 27, 1989.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr.
(1) Type and number of entities affected: This regulation potentially affects hazardous waste treatment, storage or disposal facilities. There are currently 73 facilities in Kentucky. Facilities that must prepare a RCRA facility investigation or a corrective action plan will be affected. Also affected will be owners and operators of tanks and containers.
(a) Direct and indirect costs or savings to those affected:
1. First year: The facilities will experience a savings in regard to the establishment of maximum RCRA facility investigation (RFI) and corrective action fees. The actual expense will be billed by the cabinet to the facility. The amount of savings will depend on the extent of the RFI or corrective action needed.
Additional savings will also be realized as tank and container fees shall be paid once for each different waste and for each different type of container. The estimates for the cost of review for tank and container permits are based on a relatively simple tank or container facility. The assumption was made that the Part B permit application contained one type of tank or container unit and one waste. The cost for review was reduced to reflect this simple system design. The filing fee is based on the number of hours to review a permit application. The unit fee is based on the number of hours to review a permit application and to conduct the public hearing. The cost for technical staff is the midrange salary for the engineers, hydrologists, section supervisors, branch managers and the director. Overhead and fringe is 32 percent of the midpoint salary. Each type of permit must be reviewed for administrative completeness for the general facility requirements found in 401 KAR 34:010 to 401 KAR 34:176. Even simple facilities must meet such general facility requirements as the contingency plan, waste minimization data, and emergency preparedness. These must all be reviewed. The filing fee is based on 91 hours of review and 14 clerical hours for a total of 105 hours. Total personnel costs are $5,800. Additional expenses of $1,000 are for the cost of a public hearing. The review fee is based on the costs incurred to technically review the draft permit. The purpose of this review is to determine if the proposed facility addresses all requirements in the regulations and to determine if the facility is engineered to protect human health and the environment in a manner consistent with the hazardous waste regulations. Each type of unit of a hazard waste facility review requires a different amount of time to review and prepare necessary documents. The charts in Attachment A illustrate time required for technical review and clerical support. The miscellaneous category includes costs for travel to meetings and copying.
The data in this regulation were based on the personnel time and other resources required to issue permits. A RCRA (Resource Conservation and Recovery Act) Facility Investigation is required by the U.S. EPA under the auspices of the corrective action provisions of the Hazardous and Solid Waste Amendments of 1984. Provisions for corrective action (Sections 3004(u), 3004(v), and 3008(h)), required for both RCRA units and solid waste management units at a facility regardless of when the release took place, require the facility to investigate and remedy contamination. Section 12 of 401 KAR 34:060 requires corrective action for waste management units. The RCRA facility assessments (RFA) and investigations (RFI) are to determine if corrective action is necessary. The purpose of a RCRA facility assessment is to identify releases or likely releases of hazardous waste or hazardous constituents requiring further investigation. The RFI is composed of three essential parts; the preliminary review (PR), the visual site inspection (VSI) and the sampling visit (SV). If the RCRA facility assessment warrants further evaluation of a site, a RCRA facility investigation is required. The RCRA facility investigation does not provide detailed quantification of a release but will provide sufficient information to individuals that a release occurred. The RCRA facility investigation includes the design and development of the RCRA facility investigation monitoring plan, soil, air and water monitoring, and site visits. Corrective action measures are required at all sites at which there has been a release of hazardous waste or hazardous

constituents to the environment and a threat to human health and the environment is probable. A plan must be developed to determine the extent of the release and to design the appropriate corrective measures. The salaries are based on midpoint salaries of each job classification plus 32 percent fringe and overhead. The fee also includes costs for sampling all media and for site visits. The itemized costs for the RFI, RFA and corrective action fees are found in Attachment A and B.

2. Continuing costs or savings: There is no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no additional factors increasing or decreasing costs.

2. Continuing costs or savings: There is no continuing cost or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The proposed amendments will more accurately reflect the expenses incurred by the cabinet in Part B permit process for RCRA facility investigations (RFIs) and corrective action. The facility will be charged for actual cabinet expenses. The current fee will be the new maximum fee. Tank and container fees shall be paid once for each different waste and for each different type of container. Presently, each tank and container is assessed the fee regardless of type. These fees are based on midpoint salaries of each job classification plus 32 percent fringe and overhead. Attachment A reflects the proposed fees based on expended resources for RFIs and corrective action. Attachment B shows fees based on expended resources for RFAs and units.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be a direct effect on state revenues from promulgation of this regulation. The fee obtained through this regulation will go directly in the state agency receipts fund to be distributed to the cabinet. There will be no effect on local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed amendment lowers tank and container fees for tanks and containers and allows the fees to be paid once for each different waste and for each different type of container. (a) Alternative:

1. Less stringent: To charge lesser fees would cause the cabinet to absorb the expense of each permit issued.

2. More stringent: More stringent fees would put undue hardship on the regulated community.

3. Present proposal: The present proposal uses figures based on actual permit issuance for tanks and containers.

Alternatives: The proposed amendment sets a maximum for the Part B permit fees for RCRA facility investigations and corrective action and allows the cabinet to charge the facility the actual costs incurred.

1. Less stringent: To charge lesser fees would cause the cabinet to absorb the expense of each permit issued.

2. More stringent: More stringent fees would put undue hardship on the regulated community.

3. Present proposal: The present proposal allows for the varying degree of cabinet activity involved in the RFI and corrective action processes.

(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 in conflict.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? Yes. This regulation is tiered to apply varying fees based on the type of treatment, storage or disposal units at each facility.

ATTACHMENT A
RCRA FACILITY INVESTIGATION (RFI)

ACTIVITIES	RESOURCES	COSTS
Clerical Logging RFI	10 hours	$ 122.89
First review of facility's preliminary investigation workplan development. Contaminant source and environmental setting characterization. All media are reviewed by technical staff	287 hours	$ 5,121.92
Request for clarification and additional information	50 hours	$ 992.32
Design and development of monitoring program and initial phase of release characterization and health and environmental assessment for all media	349 hours	$ 6,317.95
Approval letters	26 hours	$ 518.31
Site visit (reviewer and field inspector)	68 hours	$ 1,188.21
Travel	450 miles	$ 81.00
Lodging	N/A	$ 108.00
TOTAL		$14,450.60

RCRA FACILITY ASSESSMENT (RFA)

ACTIVITIES	RESOURCES	COSTS
Preliminary review by technical staff of documents, written reports and discussions with relevant individuals	102.5 hours	$ 1,829.26
Planning the site visit	17 hours	$ 287.70
Technical and field staff conducting field activities (obtaining visual evidence of unit characteristics, contaminant migration pathways, releases and exposure potential)	60 hours	$ 1,020.89
Travel	450 miles	$ 94.50
Lodging and meals	N/A	$ 216.00

Technical staff makes a determination of the need for further action (the results of the visual site inspection and the preliminary review are incorporated into a draft report for submission to US EPA)	45	hours	$ 803.09
Clerical support for determination	30	hours	$ 363.66
Management review of draft RFA report	.5	hours	$ 212.34
Review of US EPA comments on draft RFA report	11	hours	$ 211.83
Developing sampling plan	31	hours	$ 535.39
Technical staff and field inspector conduct sampling visit	45	hours	$ 765.67
Travel	450	miles	$ 94.50
Lodging and meals	N/A		$ 108.00
Analysis of samples (6 samples)	N/A		$ 2,400.00
Final RFA report and recommendations	60	hours	$ 1,070.78
Clerical support for final RFA report	30	hours	$ 368.68
Review of EPA comments and drafting of final RFA report	40	hours	$ 788.89
Clerical support for final RFA report	7.5	hours	$ 92.18
Review and signing of joint US EPA/state letter to facility listing results of final RFA report	6.5	hours	$ 130.88
TOTAL			$11,394.24

CORRECTIVE ACTION

ACTIVITIES	RESOURCES	COSTS
Clerical logging	15 hours	$ 184.34
Review of proposed corrective measures for all media (soil, groundwater, subsurface gas contamination, air contamination, surface water contamination)	1300 hours	$23,200.32
Written and verbal requests for clarification and additional information	75 hours	$ 1,268.78
Technical staff approval of corrective measures for all media	63	$ 1,207.06
Clerical support for approval of corrective measures for all media	20	$ 245.78
Meeting and written correspondence contact with facility concerning approval	70 hours	$ 1,268.78
Site visits for technical staff and field inspector	68 hours	$ 1,188.21
Travel	900 miles	$ 162.00
Lodging	N/A	$ 216.00
TOTAL	N/A	$28,942.27

ATTACHMENT B
INCINERATORS

ACTIVITIES	RESOURCES	COSTS
Technical review of application including review of waste characteristics, waste analyses, process information, groundwater, closure/postclosure, trial burn plans	500 hours	$ 9,254.00
Clerical support of review	50 hours	$ 614.00
Preparation of draft permit by technical staff and review by supervisors	280 hours	$ 5,098.80
Clerical support for draft permit	30 hours	$ 368.40
Preparation of fact sheet, statement of basis, etc. by technical staff	155 hours	$ 3,032.95
Clerical support for fact sheet, statement of basis, etc.	40 hours	$ 491.20
Miscellaneous	50 hours	$ 500.00
TOTAL		$19,359.35

WASTE PILES

ACTIVITIES	RESOURCES	COSTS
Technical review of application including review of waste characteristics, waste analyses, process information, groundwater, closure/postclosure	260 hours	$ 5,031.20
Clerical support of review	30 hours	$ 368.40
Preparation of draft permit by technical staff and review by supervisors	180 hours	$ 3,284.80
Clerical support for draft permit	50 hours	$ 614.00
Preparation of fact sheet, statement of basis, etc. by technical staff	120 hours	$ 2,214.40
Clerical support for fact sheet, statement of basis, etc.	30 hours	$ 368.40
Miscellaneous	35 hours	$ 350.00
TOTAL		$12,231.20

SURFACE IMPOUNDMENTS

ACTIVITIES	RESOURCES	COSTS
Technical review of application including review of waste characteristics, waste analyses, process information, groundwater, closure/postclosure	370 hours	$ 6,826.20
Clerical support of review	30 hours	$ 368.40
Preparation of draft permit by technical staff and review by supervisors	180 hours	$ 3,314.80
Clerical support for draft permit	50 hours	$ 614.00
Preparation of fact sheet, statement of basis, etc. by technical staff	120 hours	$ 2,244.40

Clerical support for fact sheet, statement of basis, etc.	30 hours	$ 368.40
Miscellaneous	30 hours	$ 300.00
TOTAL		$14,036.20

TANKS

ACTIVITIES	RESOURCES	COSTS
Technical review of application including review of waste characteristics, waste analyses, process information, groundwater, closure/postclosure	147 hours	$ 2,691.57
Clerical support of review	10 hours	$ 122.80
Preparation of draft permit by technical staff and review by supervisors	115 hours	$ 1,605.60
Clerical support for draft permit	40 hours	$ 491.20
Preparation of fact sheet, statement of basis, etc. by technical staff	105 hours	$ 1,925.00
Clerical support for fact sheet, statement of basis, etc.	30 hours	$ 368.40
Miscellaneous	20 hours	$ 200.00
TOTAL		$ 7,404.57

CONTAINERS

ACTIVITIES	RESOURCES	COSTS
Technical review of application including review of waste characteristics, waste analyses, process information, groundwater, closure/postclosure	64 hours	$ 1,171.84
Clerical support of review	10 hours	$ 122.80
Preparation of draft permit by technical staff and review by supervisors	105 hours	$ 1,925.00
Clerical support for draft permit	30 hours	$ 368.40
Preparation of fact sheet, statement of basis, etc. by technical staff	105 hours	$ 1,925.00
Clerical support for fact sheet, statement of basis, etc.	30 hours	$ 368.40
Miscellaneous	10 hours	$ 100.00
TOTAL		$ 5,981.44

LAND TREATMENT

ACTIVITIES	RESOURCES	COSTS
Technical review of application including review of waste characteristics, waste analyses, process information, groundwater, closure/postclosure	400 hours	$ 7,465.00
Clerical support of review	50 hours	$ 614.00
Preparation of draft permit by technical staff and review by supervisors	230 hours	$ 4,206.80
Clerical support for draft permit	30 hours	$ 368.40
Preparation of fact sheet, statement of basis, etc. by technical staff	120 hours	$ 2,244.40
Clerical support for fact sheet, statement of basis, etc.	30 hours	$ 368.40
Miscellaneous	50 hours	$ 500.00
TOTAL		$15,767.00

HAZARDOUS WASTE LANDFILLS

ACTIVITIES	RESOURCES	COSTS
Technical review of application including review of waste characteristics, waste analyses, process information, groundwater, closure/postclosure	410 hours	$ 7,521.60
Clerical support of review	50 hours	$ 614.00
Preparation of draft permit by technical staff and review by supervisors	180 hours	$ 3,314.80
Clerical support for draft permit	30 hours	$ 368.40
Preparation of fact sheet, statement of basis, etc. by technical staff	125 hours	$ 2,385.15
Clerical support for fact sheet, statement of basis, etc.	30 hours	$ 368.40
Miscellaneous	50 hours	$ 500.00
TOTAL		$15,072.25

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation contains the fee schedule for Part B permit applications for treatment, storage, or disposal facilities. The federal regulations do not contain a fee schedule. KRS 224.871 authorizes the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits.

2. State compliance standards. The proposed amendment lowers the Part B permit fees for tanks and containers. The unit fee is also being changed to a fee for each different waste and each different type of tank or container. Also, a maximum fee for RCRA facility investigations (RFI) and corrective action is included. These fees will be billed as actual expenses by the cabinet for review. The fees for RFI's and corrective action review will have maximum fees of $14,500 and $29,000 respectively.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations do not contain a fee schedule.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No; the provision for fees in this regulation is also not found in the federal regulations. The cabinet is authorized by KRS 224.871 to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The cabinet assesses fees for RCRA facility investigations and corrective action plan reviews. These

reviews are part of a Part B permit application. The fees are used by the cabinet to defray the costs associated with review of these applications. KRS 224.871 provides that the cabinet may establish fees for hazardous waste permits.

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

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 and emergency identification numbers.

Section 1. Applicability. (1) This regulation applies to facilities which require emergency permits, emergency identification numbers and land treatment demonstration permits.
(2) The provisions of this regulation shall apply to short-term permit applications submitted on or after the effective date of this regulation, and to such applications which are not complete, as determined by the cabinet, by the effective date of this regulation. Short-term permit applications which are complete, as determined by the cabinet, by the effective date of this regulation, 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; [and]
(2) Land treatment demonstration - $5,500; and
(3) Emergency identification numbers - $100.

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 be made payable to the Kentucky State Treasurer.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted October 27, 1989 at 10 a.m. (EDT), in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Persons interested in attending this public hearing shall notify in writing at least five days prior to the hearing: Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort offices of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 27, 1989.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr.
(1) Type and number of entities affected: The proposed amendment involves emergency identification number fees, which will affect different entities. Land treatment demonstration permit fees affect land treatment facilities. There are currently 2 in Kentucky. Emergency identification numbers could affect anyone in Kentucky who handles hazardous materials. Emergency identification numbers are required for hazardous materials/waste spills.
(a) Direct and indirect costs or savings to those affected:
1. First year: The cost to facilities will be the direct cost of obtaining the emergency ID number. The costs will be $100. The cost is not as high as the issuance fee for a generator because the review process is more simple. Typically only one waste is involved. Additionally, the review does not include any production process that must be analyzed. The fee is based upon clerical staff time and time for review by engineers or hydrogeologists.
2. Continuing costs or savings: The emergency ID numbers are issued on a one-time-only basis; there are no continuing costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: This regulation will result in a savings to the cabinet. The amount of the fee will recover the cost to the cabinet for emergency issuance of the ID numbers. The cabinet issues approximately 12 emergency ID numbers in a years time, however, the number is not predictable.
2. Continuing costs or savings: There are no additional factors increasing or decreasing costs.
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: There will be a direct effect on state revenues from promulgation of this regulation. The fees obtained for the issuance of emergency identification numbers will increase the state revenue. There will be no effect on local revenues from promulgation of this regulation.
(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed regulation establishes a fee for an emergency identification number.
Alternative: 1. Less stringent: The cabinet could have been less stringent by charging a smaller fee. However, a smaller fee would place

a financial burden on the cabinet. The cabinet has statutory authority to charge a reasonable fee to recover the cost of permit application review.

2. More stringent: The cabinet rejected more stringent alternatives because it would place a financial burden on smaller facilities.

3. Present proposal: The present proposal will recover the expense to the cabinet for the review and issuance of emergency identification numbers. The cabinet believes that these fees are equitable and adequate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, rule or government policy in conflict.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: The date on which these fees are based were derived from the personnel time and additional resources needed to issue these identification numbers.

TIERING: Was tiering applied? Yes. This regulation applies tiered fees to varying hazardous waste management facilities in Kentucky which are eligible for short-term permits.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The requirements in this regulation are not based on any standards contained in the federal mandate. Facilities which require emergency or land treatment demonstration permits or emergency identification numbers must pay a fee to receive the permit. The federal regulations do not provide for a fee schedule. KRS 224.871 provides that the cabinet shall establish fees for the processing, review and issuance of certificates and permits.

2. State compliance standards. The proposed amendment adds a fee for emergency identification numbers.

3. Minimum or uniform standards contained in the federal mandate. There is no 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; this regulation imposes fees for emergency permits and land treatment demonstration permits or emergency identification numbers. The federal mandate does not provide for a fee system. KRS 224.871 gives the cabinet authority to establish fees for the processing, review and issuance of certificates and permits.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The fee for emergency or land treatment demonstration permits or emergency identification numbers is assessed to defray the cost of the review activities associated with the processing and issuance of the permit.

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

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 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 the effective date of this regulation, and to such applications which are not complete, as determined by the cabinet, by the effective date of this regulation. Applications for permit modifications which are complete, as determined by the cabinet, by the effective date of this regulation, shall be subject to this regulation as in effect on December 2, 1983.

Section 2. Minor Modifications. A nonrefundable fee of $300 per minor modification shall 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 <u>at the facility</u>: [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 unit[s] <u>fees</u> 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. <u>The tank and container unit fees in subsections (1) and (2) of this section shall be paid once for each different type of tank or container and once for each different waste to be placed in the tank or container.</u>

(1) This subsection sets forth the major

modification fees for the addition of one (1) or more new waste streams.

(a) For the addition of new waste for treatment, storage or disposal facilities:

1. Tanks - $3,600 [4,000];
2. Surface impoundments - $5,000;
3. Waste piles - $4,500;
4. Incinerators - $6,500;
5. Containers - $3,200 [3,500];
6. Land treatment - $5,500; and
7. Landfills - $5,500.

(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 - $8,745 [13,250];
2. Containers - $8,200 [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 - $3,950 [6,000];
2. Surface impoundments - $7,000;
3. Waste piles - $6,500;
4. Incinerators - $8,500;
5. Containers - $4,200 [5,500];
6. Land treatment - $7,500; and
7. Landfills - $7,500.

(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 the cost of review but shall not exceed the following amounts:

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. All [The appropriate] fees except the fees for modification of RCRA facility investigation and the corrective action shall be submitted to the cabinet with the application for modification. The major modification fees for RCRA facility investigations and corrective action shall be submitted to the cabinet upon request from the cabinet. The checks shall be made payable to the Kentucky State Treasurer.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted October 27, 1989, at 10 a.m. (EDT), in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Persons interested in attending this public hearing shall notify in writing at least five days prior to the hearing Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persona wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort office of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 27, 1989.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr.

(1) Type and number of entities affected: This regulation potentially affects hazardous waste treatment, storage or disposal facilities. There are currently 73 facilities in Kentucky. Only those facilities that request a permit modification will be affected.

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

1. First year: The facilities will experience a savings in regard to the RCRA facility investigation and corrective action fees. The actual expense will be billed by the cabinet to the facility. The amount of savings will depend on the extent of the RFI and/or the corrrective action review needed. Additional savings will also be realized as tank and container fees shall be paid once for each different waste and for each different type of container. Facilities with single waste streams and one design for the tank or container will pay a smaller fee that more accurately reflects the cost of review. Again, savings will depend on each facility's circumstance. The origin of the proposed fees is outlined in Attachment A. The existing fees for addition of a new waste stream are based upon 25 percent of costs to complete an entire permit review for a Part B permit for that unit. The existing fees for the addition or substantial modification of a treatment, storage or disposal unit are based upon 75 percent of the cost to complete an entire permit review for a Part B permit for that unit. Major modification fees in Section 3(2) are based upon 50 percent of costs to complete an entire permit review for a Part B permit for that unit.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the promulgating administrative body.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs: The proposed amendments will more accurately reflect the expenses incurred by the cabinet in the permit modification process for RCRA facility investigations and corrective

action. The facility will be charged for actual cabinet expenses. The current fee will be the new maximum fee. Tank and container fees shall be paid once for each different waste and for each different type of container. Presently, each tank and container is assessed a higher fee regardless of type.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on local revenues from promulgation of this regulation. There may be a direct effect on state revenues. The fees revenue may increase or decrease depending on the facilitys' request for permit modification.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed amendment lowers tank and container permit modification fees and allows the fees to be paid once for each different waste and for each different type of container. (a) Alternative:

1. Less stringent: To charge lesser fees would cause the cabinet to absorb the expense of each permit issued.

2. More stringent: More stringent fees would put undue hardship on the regulated community.

3. Present proposal: The present proposal uses figures based on actual permit issuance for tanks and containers.

(b) Alternatives: The proposed amendment sets a maximum for the permit modification fees for RCRA facility investigations and corrective action and allows the cabinet to charge the facility the actual costs incurred.

1. Less stringent: To charge lesser fees would cause the cabinet to absorb the expense of each permit issued.

2. More stringent: More stringent fees would put undue hardship on the regulated community.

3. Present proposal: The present proposal allows for the varying degree of cabinet activity involved in the RFI and corrective action permit modification process.

(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 in conflict.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? Yes. This regulation is tiered to apply varying fees based on the type of treatment, storage or disposal units at each facility.

ATTACHMENT A
PROPOSED FEE AMENDMENTS
RCRA FACILITY INVESTIGATION (RFI)

ACTIVITIES	RESOURCES	COSTS
Clerical Logging RFI	10 hours	$ 122.89
First review of facility's preliminary investigation workplan development. Contaminant source and environmental setting characterization. All media are reviewed by technical staff	287 hours	$ 5,121.92
Request for clarification and additional information	50 hours	$ 992.32
Design and development of monitoring program and initial phase of release characterization and health and environmental assessment for all media	349 hours	$ 6,317.95
Approval letters	26 hours	$ 518.31
Site visit (reviewer and field inspector)	68 hours	$ 1,188.21
Travel	450 miles	$ 81.00
Lodging	N/A	$ 108.00
TOTAL		$14,450.60

CORRECTIVE ACTION

ACTIVITIES	RESOURCES	COSTS
Clerical logging	15 hours	$ 184.34
Review of proposed corrective measures for all media (soil, groundwater, subsurface gas contamination, air contamination, surface water contamination)	1300 hours	$23,200.32
Written and verbal requests for clarification and additional information	75 hours	$ 1,268.78
Technical staff approval of corrective measures for all media	63	$ 1,207.06
Clerical support for approval of corrective measures for all media	20	$ 245.78
Meeting and written correspondence contact with facility concerning approval	70 hours	$ 1,268.78
Site visits for technical staff and field inspector	68 hours	$ 1,188.21
Travel	900 miles	$ 162.00
Lodging	N/A	$ 216.00
TOTAL	N/A	$28,942.27

CHANGE FROM DETECTION TO COMPLIANCE MONITORING

ACTIVITIES	RESOURCES	COSTS
Clerical logging	11 hours	$ 102.41
Technical Review of modification application	135 hours	$ 1,825.20
Draft Permit	112 hours	$ 1,514.24
Clerical for draft permit	54 hours	$ 502.74
Public notice and meeting including travel and printing costs	N/A	$ 2,010.00
TOTAL		$ 5,954.59

CHANGE FROM COMPLIANCE MONITORING
TO CORRECTIVE ACTION

ACTIVITIES	RESOURCES	COSTS
Clerical logging	11 hours	$ 102.41
Technical Review of modification application	286 hours	$ 3,809.82
Draft Permit	112 hours	$ 1,514.24
Clerical for draft permit	54 hours	$ 504.74
Public notice and meeting including travel and printing costs	N/A	$ 2,010.00
TOTAL		$ 7,941.21

MODIFICATION OF DETECTION, COMPLIANCE OR CORRECTIVE ACTION PROGRAM

ACTIVITIES	RESOURCES	COSTS
Clerical logging	11 hours	$ 102.41
Technical Review of program change	145 hours	$ 1,960.40
Draft Change	110 hours	$ 1,487.20
Clerical support for modification	54 hours	$ 502.74
TOTAL		$ 4,052.75

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The fees assessed in this regulation are used to defray the costs associated with the review of permit modifications. The cabinet has statutory authorization to establish a fee schedule for hazardous waste permits.
2. State compliance standards. The proposed amendments to this regulation lower permit modification fees for tanks and containers and allow the fee to be paid once for each different type of tank or container and once for each different waste. Also, fees for RCRA facility investigations and corrective action are to be the cost of review. The amendments also establish maximum fees.
3. Minimum or uniform standards contained in the federal mandate. There is no 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. The federal regulations do not contain provisions for fees. The cabinet is authorized by KRS 224.871 to promulgate regulations requiring the payment of fees for hazardous waste permits.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The modification fees contained in this regulation are not based on any federal standards. The federal regulations do not contain provisions for fees. KRS 224.871 authorizes the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste permits and certificates.

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 39:080. Recycling 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 recyclers of hazardous waste.

Section 1. Applicability. This regulation applies to all persons considered to be recyclers in accordance with the criteria contained in Section 1 of 401 KAR 35:010 and 401 KAR Chapter 36.

Section 2. Schedule of Fees for Recycling. (1) An annual fee shall be required in order to register as a recycler of hazardous wastes. The fee to register as a hazardous waste recycler is $300. Generators who generate less than 100 kg of hazardous waste in a calendar month (i.e., limited quantity generators) shall be exempt from the registration fee for recycling activities.

(2) No fee is charged if a registrant modifies his registration by making a name change. If a registrant submits a registration to modify any other information, a fee of fifty (50) dollars shall apply.

Section 3. Submittal of Fees. The required fees shall be submitted to the cabinet with the permit application. All checks shall be made payable to the Kentucky State Treasurer.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted October 27, 1989 at 10 a.m. (EDT), in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Persons interested in attending this public hearing shall notify in writing at least five days prior to the hearing: Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort offices of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 27, 1989.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr.
(1) Type and number of entities affected: This regulation affects 160 hazardous waste recyclers in the state which have notified the cabinet.
(a) Direct and indirect costs or savings to those affected:
1. First year: There will be a direct cost of $50 per hazardous waste recycler for any modification to the annual registration. The existing annual registration fee for marketers and burners of hazardous waste fuel or oil burned for energy recovery covers the administrative costs of reviewing and updating the information on the registration. The cost for registration and certificate issuance include technical review of information, verification of new or changed information by field staff, clerical support, verification of data in EPA's Hazardous Waste Data Management System, maintenance of hard copy files by the state, and file and record reviews. File and record reviews for registrations include determination of the appropriate EPA

Identification Number to be issued to the facility. The time required for technical review of a single registration is 13 hours; 9 hours of clerical time are required to process a single registration. The salaries are based on mid-point salaries of each job classification plus 32 percent fringe and overhead. A modification fee has been proposed for any change in registration except for changing the name of the registrant. A fee of $50 is proposed based upon personnel costs. The time required for technical review of a modification is 2 hours. The time for typing, copying, filing and data management is 1.7 hours.

2. Continuing costs or savings: The registration is an annual registration. Any modification will be $50.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will experience a savings as the fee will cover costs incurred for processing registration modifications. The agency processes an average of 20 registration modifications monthly.

2. Continuing costs or savings: The cabinet will experience continued savings as the fee will cover costs incurred for processing registration modifications.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: All fees collected from this regulation will increase the state revenue. However, the fees are calculated to reflect the cost for review of the registration modification and issuance of the amended certificate. There will be no effect on local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment requires hazardous waste recyclers to pay a fee when modifying the information on their annual registration. The fee is $50.

Alternative: 1. Less stringent: If Kentucky had chosen to charge less for the review of the registration modification, the fee would not cover the cost of the review.

2. More stringent: It was unnecessary for Kentucky to charge more for permit modification review because $50 will cover the review expense.

3. Present proposal: The present fee of $50 was chosen because it fairly represents the review costs. KRS 224.871 requires the cabinet to promulgate fee regulations equaling the cost of review.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, rule or government policy which conflicts with the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: The registration modification fee is based on the cabinet's expense for reviewing and processing recycler registration modifications. These expenses include personnel time and the additional resources necessary to process the amended certificate.

TIERING: Was tiering applied? Yes. This regulation applies to hazardous waste recyclers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal regulatory system does not include any provision for fees. KRS 224.871 provides that the cabinet shall establish fees for the processing, review, and issuance of certificates and permits.

2. State compliance standards. The proposed amendment to this regulation requires hazardous waste recyclers to pay a fee when modifying the information on their annual registration. The fee is $50. There is no fee for name changes.

3. Minimum or uniform standards contained in the federal mandate. There is no 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; the proposed amendments to this regulation do not impose stricter requirements on regulated entities. Under the federal regulations, no fees are assessed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Fees are not assessed under the federal regulatory system, thus there is no comparable mandate suggested or contained in the federal regulations with regard to registration fees. KRS Chapter 224 provides that the cabinet shall establish fees for the processing, review, and issuance of certificates and permits.

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

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 operation permit for a landfill required in Section 4 of 401 KAR 38:010 and pay the fees required by 401 KAR 39:030.

(2) The provisions of this regulation shall apply to postclosure permit applications submitted on or after the effective date of this regulation, and to such applications which are not complete, as determined by the cabinet, by the effective date of this regulation. Postclosure permit applications which are complete, as determined by the cabinet, by the effective date of this regulation, shall be subject to this regulation as in effect on March 10, 1988.

Section 2. Filing Fees. 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 $4,000 [2,000].

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 $9,000 [7,000].

Section 4. Submittal of Fees. (1) The fees shall be submitted to the cabinet with the permit application.

(2) All checks or money orders shall be made payable to the Kentucky State Treasurer.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted October 27, 1989 at 10 a.m. (EDT), in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Persons interested in attending this public hearing shall notify in writing at least five days prior to the hearing: Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort offices of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 27, 1989.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr.

(1) Type and number of entities affected: The proposed amendments apply to all owners and operators of hazardous waste facilities that require a postclosure permit. Currently 7 facilities will be required to pay a post closure permit fee.

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

1. First year: A direct cost of $4,000 will be charged for each filing fee. These fees include personnel and other resource costs for application receipt, site visit, and documentation. A fee of $9,000 will be charged for technical review of each postclosure permit application. This is a $2,000 increase on both fees. The salaries are based on mid-point salaries of each job classification plus 32 percent fringe and overhead. For the filing fees permit reviewers will spend 136 hours in review. Clerical support will require 40 hours. Personnel cost will be $2,981.36, an additional cost of $1,008.67 for site visits and documentation.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: This regulation establishes a filing fee for postclosure permit applications.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This proposed regulation will cause a savings for the promulgating administrative body. The fee charged will adequately cover the costs associated with a postclosure permit.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be a direct effect on state revenues from promulgation of this proposed amendment. The fees obtained would increase the state revenues. There will be no effect on local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) This proposed regulation increases filing and review fees for postclosure permits.

Alternative: 1. Less stringent: The cabinet could have chosen to be less stringent by assessing a smaller fee. However, this alternative was rejected because the cabinet has statutory authority to recover the cost of permit review.

2. More stringent: The cabinet could have chosen to be more stringent by assessing more than the full cost for review of the application.

3. Present proposal: In the present proposal the cabinet will assess the cost of reviewing the application. It allows the state to recover the expense of reviewing the application.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules or government policies in conflict with the proposed amendment.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: The data in this regulation were based on the

personnel time and other resources required to issue the permit.

TIERING: Was tiering applied? Yes. This regulation applies to postclosure fee requirements for land disposal hazardous waste sites or facilities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The requirement for a postclosure permit fee is not mandated by the federal regulations; however, KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste certificates or permits.

2. State compliance standards. The proposed amendment to this regulation increases filing and review postclosure fees.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This proposed regulation contains a requirement to submit a postclosure permit fee. There is no federal requirement for such a fee.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable. This proposed regulation is not based on standards suggested or contained in the federal mandate. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits.

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 39:110. Marketer and burner registration 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 annual fees for the registration of marketers and burners of hazardous waste fuel or used oil burned for energy recovery.

Section 1. Applicability. This regulation applies to marketers or burners of hazardous waste fuel or used oil burned for energy recovery in accordance with the criteria established in 401 KAR 36:040 and 401 KAR 36:050.

Section 2. Annual Registration and Schedule of Fees. (1) Marketers and burners of hazardous waste fuel or used oil burned for energy recovery shall register annually with the cabinet. The fee to register as a marketer or burner is $300.

(2) No fee is charged if a registrant modifies his registration by making a name change. If a registrant submits a registration to modify any other information, a fee of fifty (50) dollars shall apply.

Section 3. Submittal of Fees. The required fees shall be submitted to the cabinet with the registration form. All checks shall be made payable to the Kentucky State Treasurer.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted October 27, 1989 at 10 a.m. (EDT), in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Persons interested in attending this public hearing shall notify in writing at least five days prior to the hearing: Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort offices of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 27, 1989.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr.

(1) Type and number of entities affected: This regulation affects 50 marketers and burners of hazardous waste fuel or oil burned for energy recovery in the state that have notified the cabinet.

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

1. First year: There will be a direct cost of $50 per hazardous waste marketer or burner for a registration modification. The existing annual registration fee for marketers and burners of hazardous waste fuel or oil burned for energy recovery covers the administrative costs of reviewing and updating the information on the registration. The cost for registration and certificate issuance include technical review of information, verification of new or changed information by field staff, clerical support, verification of data in EPA's Hazardous Waste Date Management System, maintenance of hard copy files by the state, and file and record reviews. File and record reviews for registrations include determination of the appropriate EPA identification number to be issued to the facility. The time required for technical review of a single registration is 13 hours; 9 hours of clerical time are required to process a single registration. The salaries are based on midpoint salaries of each job classification plus 32 percent fringe and overhead. A modification fee has been proposed for any change in registration except for changing the name of the registrant. A fee of $50 is proposed based upon personnel costs. The time required for technical review of a modification is 2 hours. The time for typing, copying, filing and data management is 1.7 hours.

2. Continuing costs or savings: The registration is an annual registration. A registration modification will be $50 if changes are made to the registration.

3. Additional factors increasing or decreasing costs (note any effects upon competition): A cost may or may not be incurred depending on the need for a registration modification.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The $50 registration modification fee will cover the cost of reviewing and processing the registration modification and issuing the amended certificate.

2. Continuing costs or savings: The cabinet will experience continued savings as the $50 fee will cover costs of reviewing the registration modification and issuance of the amended certificate.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: Fees collected from this regulation will increase the state revenues. There will be no effect on local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed amendment charges a fee for permit modification to annual registrations for marketers and burners of hazardous waste fuel or oil burned for energy recovery.

Alternative: 1. Less stringent: If Kentucky had chosen to charge less for the review of the registration application, the fee would not cover the cost of the review.

2. More stringent: It was unnecessary for Kentucky to charge more for review because $50 will cover the review expense.

3. Present proposal: The present fee of $50 was chosen because it fairly represents the review costs. KRS 224.871 requires the cabinet to promulgate fee regulations equaling the cost of review.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules or government policies in conflict with the proposed amendment.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: The registration fees are based on the cabinet's expense for reviewing and processing marketer and burner registration modifications. These expenses include personnel time and the additional resources necessary to process the registration modifications and issuance of the amended certificate.

TIERING: Was tiering applied? Yes. This regulation applies to marketers and burners of hazardous waste fuel or used oil burned for energy recovery.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Fees are not assessed under the federal regulatory system, thus there is no comparable mandate suggested or contained in the federal regulations with regard to registration fees. KRS 224.871 provides that the cabinet shall establish fees for the processing, review and issuance of certificates and permits.

2. State compliance standards. The proposed amendment to this regulation assesses a $50 fee for marketers and burners of hazardous waste fuel or used oil burned for energy recovery to modify an annual registration.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The annual registration of marketers and burners will provide the cabinet with more accurate information on this portion of the regulated community. This information may be used when notice of regulatory amendments is given or when correspondence on annual reports is distributed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This proposed regulation imposes requirements which are not contained in the federal regulations. The federal regulations do not contain a fee schedule for marketers and burners of hazardous waste fuel or used oil burned for energy recovery. KRS 224.871 provides the authority for the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits.

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

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 the effective date of this regulation, and to such applications which are not complete, as determined by the cabinet, by the effective date of this regulation. Part A applications for hazardous waste site or facility permits which are complete, as determined by the cabinet, by the effective date of this regulation, 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 for tanks and containers shall be submitted one (1) time for each different type of tank or container and one (1) time for each different waste to be placed in the tank or container. The fees shall be:

1. Incinerator - $2,000;
2. Waste piles - $1,000;
3. Surface impoundments - $1,500;
4. Tanks - $660 [1,000];
5. Containers - $460 [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 upon the request of the cabinet. These fees shall be the cost of review, but shall not exceed the following amounts:

(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.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: September 14, 1989

FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted October 27, 1989 at 10:30 a.m. (EDT), in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Persons interested in attending this public hearing shall notify in writing at least five days prior to the hearing: Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort offices of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 27, 1989.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr.

(1) Type and number of entities affected: This regulation affects hazardous waste treatment, storage or disposal facilities. There are currently 73 facilities in Kentucky.

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

1. First year: The facilities will experience a savings in regard to the RCRA facility investigation (RFI) and corrective action fees. The actual expense will be billed by the cabinet to the facility. A maximum fee is established for both the RCRA facility investigation and the corrective action fee. The amount of savings will depend on the extent of the RFI and/or corrective action needed. Additional savings will also be realized as tank and container fees shall be paid once for each different waste and for each different type of container. Those facilities with one tank or container type and one waste stream will experience the most savings. Again, savings will depend on each facility's circumstance. The fees are based on mid-point salaries for each job classification plus 32 percent fringe and overhead. Attachment A reflects the proposed fees based on expended resources for RFI's and corrective action. Attachment B shows fees based on expended resources for Part A applications for each type unit.

2. Continuing costs or savings: There is no continuing cost or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There is a direct savings to the promulgating administrative body since fees will increase the agency receipts.

2. Continuing costs or savings: There is no continuing cost or savings.

3. Additional factors increasing or decreasing costs: The proposed amendments will more accurately reflect the expenses incurred by the cabinet in the Part A permit process for RCRA facility investigations and corrective action. The facility will be charged for cabinet expenses. The current fee will be the new maximum for each fee. Tank and container fees shall be paid once for each different waste and for each different type of container or tank. Presently, each tank and container is assessed the fee regardless of the number of different types.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be an increase in state revenues from promulgation of this regulation. There will be no effect on local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) Alternative: The proposed amendment lowers tank and container fees for tanks and containers but requires the fees to be paid once for each different waste and for each different type of container.

1. Less stringent: To charge lesser fees would

cause the cabinet to absorb the expense of each permit issued.

2. More stringent: More stringent fees would put undue hardship on the regulated community.

3. Present proposal: The present proposal uses figures based on actual permit issuance for tanks and containers.

(b) Alternatives: The proposed amendment sets maximum fees for the Part A permit fees for RCRA facility investigations and corrective action and allows the cabinet to charge the facility the actual costs incurred.

1. Less stringent: To charge lesser fees would cause the cabinet to absorb the expense of each permit issued.

2. More stringent: More stringent fees would put undue hardship on the regulated community.

3. Present proposal: The present proposal allows for the varying degree of cabinet activity involved in the RFI and corrective action process.

(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 in conflict.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? Yes. This regulation is tiered to apply varying fees based on the type of treatment, storage or disposal units at each facility.

ATTACHMENT A
RCRA FACILITY INVESTIGATION (RFI)

ACTIVITIES	RESOURCES	COSTS
Clerical Logging RFI	10 hours	$ 122.89
First review of facility's preliminary investigation workplan development. Contaminant source and environmental setting characterization. All media are reviewed by technical staff	287 hours	$ 5,121.92
Request for clarification and additional information	50 hours	$ 992.32
Design and development of monitoring program and initial phase of release characterization and health and environmental assessment for all media	349 hours	$ 6,317.95
Approval letters	26 hours	$ 518.31
Site visit (reviewer and field inspector)	68 hours	$ 1,188.21
Travel	450 miles	$ 81.00
Lodging	N/A	$ 108.00
TOTAL		$14,450.60

CORRECTIVE ACTION

ACTIVITIES	RESOURCES	COSTS
Clerical logging	15 hours	$ 184.34
Review of proposed corrective measures for all media (soil, groundwater, subsurface gas contamination, air contamination, surface water contamination)	1300 hours	$23,200.32
Written and verbal requests for clarification and additional information	75 hours	$ 1,268.78
Technical staff approval of corrective measures for all media	63	$ 1,207.06
Clerical support for approval of corrective measures for all media	20	$ 245.78
Meeting and written correspondence contact with facility concerning approval	70 hours	$ 1,268.78
Site visits for technical staff and field inspector	68 hours	$ 1,188.21
Travel	900 miles	$ 162.00
Lodging	N/A	$ 216.00
TOTAL	N/A	$28,942.27

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The part A permit application fee for treatment, storage, or disposal facilities established in this regulation is not based on provisions contained in the federal mandate. Fees are not assessed under the federal regulatory system, thus there is no comparable mandate suggested or contained in the federal regulations with regard to permit fees. KRS 224.871 authorizes the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits.

2. State compliance standards. The proposed amendments to this regulation revise the fee structure for Part A permit applications for tanks and containers and permit renewals for treatment, storage and disposal facilities. Also, a maximum fee for RCRA facility investigations (RFI) and corrective action is included. These fees will be billed by the cabinet for Part A review. The present fee for RFI's and corrective action will be the new maximum fee.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed regulation imposes requirements which are not contained in the federal mandate. Part A permit application fees are not assessed in the federal regulations. KRS 224.871 provides the authority for the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste certificates and permits.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The fees in

this regulation are assessed to defray the costs associated with the review of Part A of the application for treatment, storage, and disposal facility permits.

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 50:036. Permit and exemption fees.

RELATES TO: KRS 224.320, 224,330, 224.340
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.073
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 by this regulation [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 the effective date of this regulation, and to applications which are not complete by the effective date of this regulation. Permit applications which are complete by the effective date of this regulation, shall be subject to this regulation as in effect on May 6, 1981.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this regulation [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.

(3) "Level I model" means any of the following models as specified in the "Guideline on Air Quality Models," which has been incorporated [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.

(4) "Level II model" means any model used to determine an air quality impact or emissions of an air contaminant [specified in the "Guideline on Air Quality Models" or approved for use by the U.S. EPA], other than a Level I model.

(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.

(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.

(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) "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 2. Applicability. (1) 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 facilities.

(2) This regulation shall apply to permit applications submitted on or after the effective date of this regulation and to applications which are not complete by the effective date of this regulation.

(3) Permit applications which are complete on or after October 26, 1988, but before the effective date of this regulation, shall be subject to this regulation as in effect on October 26, 1988.

(4) Permit applications which are complete before October 26, 1988, shall be subject to this regulation as in effect on May 6, 1981.

Section 3. Filing Fees. (1) Any owner or operator who submits an application for a permit to construct shall include with the application a filing fee in the amount of $975 [705]. Filing fees shall be in the form of a check or money order, payable to the Kentucky State Treasurer.

(2) 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 check or money order, payable to the Kentucky State Treasurer, in the amount of $600 [410].

(3) Filing fees are not refundable if a permit or exemption is denied or an application is withdrawn.

(4) 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 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 applicable component fees

listed in paragraph (b) of this subsection.

(a) Base fees. The base fee 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.

(b) Component fees. The component fees for each additional task necessary to complete the evaluation of the permit shall be:

1. Air quality analysis reviewed (each model):

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. Lowest achievable emission rate (LAER), reasonably available control technology (RACT), or best available control technology (BACT) determination: $225 each determination.

4. Preconstruction monitoring reviewed: $1,600.

5. Review of an application subject to public participation requirements: $670 [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, except that the construction toxic component fee shall not exceed $10,000.

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 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 applicable component fees listed in paragraph (b) of this subsection.

(a) Base fees. The base fee shall be determined by the formula in Appendix C to this regulation, except that the operating permit base fee shall not exceed $10,000.

(b) Component fees. The component fee for each additional task necessary to complete the evaluation of the permit shall be as follows, except that no fees shall be charged for tests or monitoring unless the [such] tests or monitoring are a prerequisite for issuance of the permit:

1. Stack test or equivalent: $1,505 each test.

2. Air quality analysis: as specified in Section 4(2)(b)1 or 2 of this regulation, as applicable.

3. Review of an application subject to public participation requirements: $260 [for a major source or for a major source following a major modification: $250].

4. Review of an application with toxic air pollutants which were not reviewed for a construction permit 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, except that the operating toxic component fee shall not exceed $10,000.

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.

Section 6. Duplicate Permit Fee. (1) Upon application for the issuance of a duplicate construction or operating permit, the duplicate construction or operating permit shall be issued by the cabinet after the cabinet has determined that the source is in compliance with all applicable regulations and upon receipt of a $300 fee by check or money order payable to the Kentucky State Treasurer.

(2) Upon application for the issuance of a duplicate permit or certification pursuant to 401 KAR 63:042, the duplicate permit or certification shall be issued by the cabinet after the cabinet has determined that the applicant is in compliance with 401 KAR 63:042 and upon receipt of a fifty (50) dollar fee by 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 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.

Section 8. Amended Permit Fees. Any owner or operator may request an amendment to a source's operating permit for the sole purpose of increasing the source's throughput limit. Upon determining that the source is in compliance with all applicable regulations the cabinet shall notify the applicant of its determination to issue the amended permit and shall send a bill for the amended permit fee of $500. The

amended permit fee shall be paid within thirty (30) days of the billing date, and shall be paid by check or money order, payable to the Kentucky State Treasurer. Failure by the applicant to pay the amended permit fee on or before the due date shall result in the denial of the amended permit.

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:

Base Fee = $670 [500] (1 + F/4)(1 + P/6 [8])

Where:

F = Number of affected facilities emitting pollutants which were reviewed for issuance of the permit.

$P = \sum_{i=1}^{F} n_i$

= 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.

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:

Component Fee = $50 (TP)(1 + AF/4)

Where:

TP = 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.

$AF = \sum_{i=1}^{TP} n_i$

= The sum of all toxic air pollutants emitted from each facility reviewed for issuance of the permit.

n_i = 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:

Base Fee = $555 [380] (1 + F/20)(1 + P/30 [40])

Where:

F = Number of affected facilities emitting pollutants which were reviewed for issuance of the permit.

$P = \sum_{i=1}^{F} n_i$

= 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.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: William C. Eddins, Director

(1) Type and number of entities affected: This regulation prescribes the fees for processing applications for the issuance of construction and operating permits and exemptions for the division. It is being amended to change the amount of the fees and the basis for the fee structure in order to better represent the amount of time that is required for the review of the different types of permits. Other amendments are being made to comply with KRS Chapter 13A requirements; to clarify the division's intent regarding definitions, component fees, duplicate permit fees, and the applicability of this regulation and its earlier versions; and to allow the cabinet to recover the costs incurred by the issuance of amended permits. All sources that are issued permits by the division will be affected by these amendments. During 1987, approximately 400 permits were issued to sources, some of which were to the same sources. Permits were divided approximately equally between operating and construction permits. The projected number of permits that will be issued in 1989 is approximately 285 (230 construction and 55 operating). However, the division expects to resume issuing 200 operating and 200 construction permits per year in the next biennium. The projected number of amended operating permits that the cabinet will issue in 1989 is 60; the cabinet presently receives no revenue for the issuance of this type of permit.

(a) Direct and indirect costs or savings to those affected: Under these amendments, the average construction permit base fee will increase from $1910 to $3115 (63%) and the average operating permit base fee will increase from $610 to $890 (46%), while the minimum construction permit fee will increase from $705 to $975 (38%) and the minimum operating permit fee will increase from $410 to $600 (46%).

Overall, permit fees paid by sources will increase from $473,000 per year to $840,000 per year (78%), assuming the division resumes issuing about 200 construction and 200 operating permits per year. Sources requesting amended permits will now pay $500 per amended operating permit.

1. First year: The first year costs for each source are the costs for obtaining the construction or operating permit; the average construction permit base fee will increase from $1910 to $3115 and the average operating permit fee will increase from $610 to $890. Some sources may obtain more than one of each type of permit per year. The duplicate permits (certifications) issued by the division pursuant to 401 KAR 63:042 will now cost $50. This better represents the division's cost in issuing duplicate permits to accredited entities.

2. Continuing costs or savings: There are no continuing costs for any one source associated with continuing operations. However, additional sources will become affected by the regulation as they apply for construction and operating permits.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Some sources will incur additional costs specified in the component fee schedule included in the proposed amendments. The total cost per year to all sources for component fees is expected to be $40,000, or 5% of the total permit fees.

(b) Reporting and paperwork requirements: No changes due to these amendment; sources are already required to submit information for the division to act on a permit application.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Presently, the division is collecting approximately $473,000 per year for reviewing applications resulting in the issuance of about 230 construction and 55 operating permits, while those reviews are costing the division approximately $675,000 per year. In order to issue the number of permits actually required each year (approximately 200 construction and 200 operating permits) the division must spend $840,000 per year. The total additional revenue requirement ($367,000) is proposed to be generated by these amendments. The division will collect $500 per amended operating permit.

1. First year: The division will gain approximately $300,000 in agency receipts the first full year that these amendments are implemented. The division's permit billing system will need to be reprogrammed to accommodate these proposed amendments. The charge for programming is about $35-$45 per hour; the division estimates that it would take around 100 hours for the Department of Information Systems to make the necessary programming changes.

2. Continuing costs or savings: The division will gain an additional $67,000 during the second year following adoption of this regulation. This additional revenue will result from more sources becoming subject to the regulation. During subsequent years, revenue generated by this regulation is expected to remain constant. There are no other continuing costs or savings to the division or to other entities.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: None due to these amendments.

(3) Assessment of anticipated effect on state and local revenues: These proposed amendments will increase state revenues by $367,000 per year; those receipts are designated as agency receipts and will be directed to the division's budget.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The division considered securing the additional fees necessary for the issuance of permits through other sources. However, neither the federal nor state governments have indicated a willingness to increase funding to the division for these purposes, and the division has no independent authority to secure the resources except for its authority to charge fees for the review of permit applications.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication between this regulation and any statute, rule, regulation, or governmental policy.

(a) Necessity of proposed regulation if in conflict: This regulation is not in conflict.

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

(6) Any additional information or comments: In 1988, the Division for Air Quality amended its permit fee regulation to recover costs associated with the issuance of permit applications that were not included in the existing regulation. At that time, the division determined that the total cost of operating its Permit Review Branch was $900,000, and that approximately 2/3 of that cost ($600,000) was associated with the actual issuance of permits. The following language was included in the regulatory impact analysis for those amendments:

The existing fees charged by the Division for Air Quality for the processing of permit applications were established in 1981. Since that time increasing personnel costs, additional responsibilities for the review of toxic air pollutants, and an increase in the number of permit applications and registration forms which, when processed, reveal that no permit is required, have added extensively to the expenses of the division. None of the additional expenses, however, are recovered through the existing permit application processing fee. The shortfall is exacerbated by the fact that the existing fee never was intended to recover all of the costs of processing permit applications. During 1987, it cost more than $900,000 to operate the division's Permit Review Branch. During that same year, the permit application processing fee recovered approximately $200,000. The division does not propose in these amendments to recover all of its costs for processing permit fee applications. Approximately 35% of the operation of the Permit Review Branch is directed toward processing registration forms and permit applications for which no permit is required, responding to inquiries, and conducting other business that does not result in the issuance of a permit. Neither those costs nor the costs incurred by other branches for participating in compliance demonstrations necessary for the issuance of operating permits are included for recovery. The

amendments are designed, however, to recover approximately $600,000 per year to offset the remaining 65% of the costs within the Permit Review Branch and incidental costs to other branches.

Since the time those paragraphs were written, several factors have combined to reduce their accuracy. First, entry-level permit review branch personnel were awarded an across the board pay increase not anticipated in 1988. Second, experience with the air toxics regulations has revealed that the review of permit applications to determine the applicability of those regulations is a much more time-consuming task than originally estimated. Consequently, the division must increase its permit review branch staff from 23 to 29 in order to meet the demand for permits. Third, systematic time accounting procedures implemented in 1989 have revealed that the total proportion of time spent reviewing applications resulting in the issuance or denial of a permit is 60% rather than the 65% assumed in 1988. Finally, actual experience with the permit fee regulation as amended in 1988 has demonstrated that the equations used generated only $473,000 per year rather than the estimated $600,000. Apparently the sample permits used in the 1988 calculations (taken from 1987) are not entirely consistent with those issued in 1989. It is possible that sources have adjusted application strategies to minimize their costs under the 1988 permit fee regulation amendments.

As a result of the factors cited above, the cost of operating the permit review branch during the period affected by this regulation is expected to be $1,400,000 per year rather than $900,000 per year, caused by the hiring of additional personnel and the payment of higher salaries not anticipated in 1988. The cost to the division for reviewing applications resulting in the issuance or denial of a permit is expected to be $840,000 rather than $600,000 per year (60% of $1,400,000 rather than 65% of $923,000). Finally, the total increase in permit fees will be $367,000 rather than $240,000 ($840,000-473,000 rather than $840,000-600,000) because of the failure of the equations used in 1988 to achieve the project revenue. The division also reviewed the types of permits issued and determined that it was necessary to charge a fee for amendments to operating permits for the sole purpose of increasing the source's throughput limit. The tasks involved in reviewing such a request include logging and acknowledging the request, calculating emissions, possible modeling, writing the determination, and managerial review. Each amended permit may vary somewhat in review requirements. The minimum cost is approximately $350 and could increase depending upon the size of the facility; the division has estimated the average cost to be approximately $500. Since the variation is relatively small, the division has determined to charge each applicant the average cost ($500) rather than propose a fee schedule.

The division continues to rely upon the tax paying public to support many of the tasks associated with the review of permit applications. Permits issued to government agencies, the review of applications for which no permit is required, and the review of registration forms to determine the necessity for a permit are not included in the existing or proposed versions of the permit fee regulation. Additionally, sources submitting applications that are denied or withdrawn following their review pay only the filing fees for those reviews.

Including with this analysis are attachments specifying the methods used to determine the fees charged by the proposed amendments.

Although it is unfortunate that sources must be burdened with permit fees, it would be even more unfortunate if those sources were unable to construct or operate because the division lacked sufficient resources to issue permits. Since general fund and federal grant monies are inadequate to support this vital function, the division must either fail to discharge its responsibilities or secure the necessary funds through its permit fee authority. The division recognizes the intimate relationship between fees charged for application reviews and money supplied from the general fund, and is prepared to propose additional amendments to this regulation if the 1990 regular session of the Kentucky General Assembly significantly alters general fund money provided to the division.

ATTACHMENT 1:
CONSTRUCTION PERMIT FEE BASE COST

A. Cost Determination for Application Containing One Facility with One Pollutant

Permit Processing Task	Units	Rate*	Cost
Correspondence	2 hr.	$26/hr.	$ 52
Typing	2 hr.	15/hr.	30
Logging, acknowledgment letter	2 hr.	15/hr.	30
Preliminary review	3 hr.	26/hr.	78
Toxics applicability assessment	5 hr.	26/hr.	130
Additional information requests (preparation)	2 hr.	26/hr.	52
Additional information requests (typing and transmittal)	2 hr.	15/hr.	30
Review and incorporation of additional information	3 hr.	26/hr.	78
Emission calculations (each)	2 hr.	26/hr.	52
Determination			
Write-up	2 hr.	26/hr.	50
EIS	4 hr.	26/hr.	104
Clerical	3 hr.	15/hr.	45
Managerial review	4 hr.	32/hr.	128
Amendments & corrections	2 hr.	26/hr.	52
Retyping	2 hr.	15/hr.	30
Distribution	2 hr.	15/hr.	30
TOTAL	42 hr.**	---	$975°

*Rate includes salary, 19% fringe benefits, and 36% indirect costs.
**Permit reviewer, 25 hours; clerical support, 13 hours, managerial review, 4 hours.
°Rounded to nearest $5.

B. The total fee for the processing of a construction permit application is calculated by multiplying a constant ($670) by a complexity factor as follows: (1 + affected facilities/4)(1 + the sum of the different nontoxic pollutants at each affected facility/6) such that the cost for processing a permit having one affected facility with one pollutant will approximately equal the base fee listed above ($975) and so that the cost for processing applications having additional nontoxic pollutants and affected

facilities will reflect the additional processing time. Any appropriate component fees are added to that product (see Attachment 3: Component Fees).

ATTACHMENT 2:
OPERATING PERMIT FEE BASE COST

A. Cost Determination for Application Containing One Facility with One Pollutant

Permit Processing Task	Units	Hourly Rate*	Cost
Logging, acknowledgment letter	2 hr.	$15	$ 30
Compliance inspection			
Preparation	2 hr.	26	52
Travel	--	--	50
Inspection	2 hr.	26	52
Inspection report			
Write report	2 hr.	26	52
Final review	1 hr.	26	26
Clerical	2 hr.	15	30
Permit application review			
Emission calculations	2 hr.	26	52
Write memo and permit	3 hr.	26	78
Clerical	1 hr.	15	15
EIS	2 hr.	26	52
Managerial review	3 hr.	32	96
Distribution	1 hr.	15	15
TOTAL	23 hr.**	---	$600°

*Rate includes salary, 19% fringe benefits, and 36% indirect costs.
**Permit reviewer, 14 hours; clerical support, 6 hours, managerial review, 3 hours.
°Rounded to nearest $5.

B. The total fee for the processing of an operating permit application is calculated by multiplying a constant ($555) by a complexity factor as follows: (1 + affected facilities/20)(1 + the sum of the different nontoxic pollutants at each affected facility/30) such that the cost for processing a permit having one affected facility with one pollutant will approximately equal the base fee listed above ($600) and so that the cost for processing applications having additional nontoxic pollutants and affected facilities will reflect the additional processing time. Any appropriate component fees are added to that product (see Attachment 3: Component Fees).

ATTACHMENT 3:
COMPONENT FEES
PUBLIC PARTICIPATION CONSTRUCTION COMPONENT FEE
-Cost Determination-

Permit Component Processing Task	Units	Hourly Rate*	Cost
Preapplication conference (average cost)	--	--	$ 50
Ad preparation of preliminary determination	1 hr.	$ 26	26
Notification of preliminary determination	2 hr.	26	52
Public hearing (average cost)	--	--	125
Review and transmittal of comment	2 hr.	26	52
Evaluation of comment responses	3 hr.	26	78
Managerial review	3 hr.	32	96
Clerical preparation	2 hr.	15	30
Final review	2 hr.	26	52
Clerical distribution	2 hr.	15	30
Ad preparation of final determination	1 hr.	26	26
Notification of final determination	2 hr.	26	52
TOTAL	20 hr.**	---	$670°

*Rate includes salary, 19% fringe benefits, and 36% indirect costs.
**Permit reviewer, 13 hours; clerical support, 4 hours, managerial review, 3 hours.
°Total rounded to nearest $5.

PUBLIC PARTICIPATION OPERATING PERMIT COMPONENT FEE
-Cost Determination-

Per Application: $260*

*Represents average time expenditure of ten hours per application type requiring public participation for review of facilities not contained on construction permit, at a rate of $26 per hour.

AIR QUALITY ANALYSIS COMPONENT FEE
-Cost Determination-

I. Review Air Quality Modeling Analyses
   A. Level 1 Models:* $50.
   B. Level 2 Models Except for PSD: $150.
   C. Level 2 Models for PSD: $350.

II. Perform Air Quality Modeling Analyses
   A. Level 1 Models:* $100.
   B. Level 2 Models Except for PSD: $200.
   C. Level 2 Models for PSD:** $1,840.

*The following Air Quality Models, included in the "Guideline on Air Quality Models (Revised)" are Level 1 Models for the purposes of this regulation: PTMAX, PTDIS, PTPLU2, and such models as may be approved by the U.S. EPA in place of these models. All other Air Quality Models included in the "Guideline on Air Quality Models (Revised)" and such other Air Quality Models as may be approved for use by the U.S. EPA are Level 2 Models for the purposes of this regulation.
**The Division for Air Quality performs Level 2 Air Quality Modeling Analyses for PSD permit applications only to confirm modeling analyses contained in the application. Applications without modeling analyses will not be accepted.

BEST AVAILABLE CONTROL TECHNOLOGY (BACT), REASONABLE AVAILABLE CONTROL TECHNOLOGY (RACT), AND LOWEST ACHIEVABLE EMISSION RATE (LAER) REVIEW COMPONENT FEE
-Cost Determination-

Proposal review:	$ 75
Literature review:	150
TOTAL	$225

TOXIC POLLUTANTS SIGNIFICANCE DETERMINATION COMPONENT FEE
-Cost Determination-

Per Application: $50 x (Total Number of Significant Toxic Pollutants) x (Sum of the Number of Facilities from which Toxic Pollutants are Emitted)

POTENTIAL TOXIC AND HAZARDOUS MATERIALS DETERMINATION COMPONENT FEE
-Cost Determination-

Per application subject to 401 KAR 63:020: $60.

STACK TEST OR EQUIVALENT COMPONENT FEE
-Cost Determination-

Permit Component Task	Units	Rate	Cost
Personnel time, 3 persons (travel, observation, and review)	60 hr.	$ 20	$1,200
Clerical time	2 hr.	15	30
Lodging, 3 persons	1 day/ person	35	105
Board, 3 persons	2 days/ person	15/day	90
Average auto expenses (2 autos)	400 miles	$.20/ mile	80
TOTAL	---	---	$1,505

TIERING: Was tiering applied? Yes. Tiering is used throughout this regulation. The amount of the permit fee is dependent upon the size and type of the source, and the different types of reviews which are required to be performed on the permit. One example is that a permit with ten affected facilities will have a larger permit fee than a permit with only two affected facilities. Another example is that there is a modeling component fee to be added to permits that require the use of modeling, and that component fee is based on the type of model that is performed.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 110(a)(2)(k) of the Clean Air Act.

2. State compliance standards. KRS 224.033(20) authorizes the cabinet to prescribe a regulation for the collection of fees to recover the costs of issuing construction and operating permits. This regulation applies to all permits issued by the cabinet pursuant to 401 KAR 50:035 and 63:042.

3. Minimum or uniform standards contained in the federal mandate. The federal statute compels the administrator of the U.S. EPA to approve state implementation plans which, among other mandatory provisions, require that owners or operators of major stationary sources pay a fee sufficient to cover "...the reasonable costs of reviewing and acting upon any application for such a permit..." and "...the reasonable costs...of implementing and enforcing the terms and conditions of any such permit..."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation satisfies the federal provision that states recover costs for issuing permits to major sources but does not provide for Kentucky to recover the costs of implementing and enforcing the permits. The federal statute does not address minor sources, therefore this regulation is not more stringent.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards, requirements, or responsibilities.

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

405 KAR 10:200. Kentucky bond pool.

RELATES TO: KRS Chapter 304, 350.020, 350.028, 350.060, 350.062, 350.064, 350.068, 350.085, 350.093, 350.095, 350.100, 350.110, 350.113, 350.130, 350.135, 350.151, 350.260, 350.465, 350.700, 350.705, 350.710, 350.715, 350.720, 350.725, 350.730, 350.735, 350.740, 350.745, 350.750, 350.755, 350.990

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.062, 350.064, 350.093, 350.130, 350.151, 350.465, 350.710, 350.715, 350.720, 350.725, 350.730, 350.735, 350.740, 350.750

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to regulate surface coal mining and reclamation operations, including requiring bond sufficient to insure satisfactory reclamation. KRS Chapter 350 further authorizes the cabinet to establish alternative methods of meeting bonding requirements. This regulation implements an alternative bonding program known as a bond pool. This regulation establishes requirements for applications for membership in the bond pool; procedures for submittal of, review of, and decisions on [such] applications, including determinations of financial standing and reclamation compliance records of applicants; procedures for acceptance of specific permit areas into coverage by the bond pool; and procedures for keeping of production records, reporting of production, and payment of fees based on coal production.

[Section 1. Applicability. This regulation applies only to the voluntary alternative bonding program known as the Kentucky Bond Pool, as established in Senate Bill No. 130, 1986 Acts Chapter 137, codified at KRS 350.700 through .755; and to permanent program permits, or parts of such permits, covered under that pool.]

Section 1. [2.] Definitions. (1) "Administrator" or "bond pool administrator" means the cabinet employee named by the secretary to assist the commission and to perform certain administrative functions in connection with the bond pool, as required by KRS 350.715.

(2) "Applicant," for purposes of this regulation, means a person or entity which has submitted an application form to the commission seeking membership in the bond pool.

(3) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program as established at KRS 350.700 through .755.

(4) "Commission" or "bond pool commission" means the seven (7) member body established at KRS 350.705.

(5) "Member" means a person or entity which the bond pool commission has determined meets the minimum requirements of KRS 350.720 and this regulation for inclusion in the bond pool and upon whom the commission has formally conferred

membership. [Permanent program permits, or portions thereof, may be covered by the bond pool only if the permittee is a member of the bond pool.]

(6) "Month of operation," for the purposes of Section 7 of this regulation, means a calendar month in which a duty exists to reclaim a disturbed area for which a permit was issued under KRS Chapter 350. It is not necessary that coal extraction occur during the month.

Section 2. Applicability. This regulation applies only to the voluntary alternative bonding program known as the Kentucky Bond Pool, as established at KRS 350.700 through 350.755, and to permanent program permits or increments covered under that pool.

Section 3. Review of Decisions. There shall be no administrative appeal under 405 KAR 7:090 from a decision of the commission. However, the applicant or member may within sixty (60) days after notice of the decision, request the commission to reconsider its decision. The commission may, at its discretion, grant or deny the request for reconsideration.

Section 4. Applications for Membership. (1) Any person desiring membership in the bond pool shall submit an application for membership to the commission at the address established by the administrator.

(2) The application shall be submitted on forms provided by the commission and shall be of the [such] form, content, and number of originals and copies as the commission may require. The application shall be typed or printed, and shall be legible throughout.

(3) Financial statements required with the application shall be prepared by a certified public accountant. Financial statements shall be kept confidential to the commission, the administrator, and cabinet personnel authorized by the administrator.

(4) The application shall include an application fee of $100, by certified check, cashier's check, or money order made payable to "Kentucky State Treasurer." The fee shall not be refunded in any circumstances, but shall be applied toward the membership fee if the applicant is accepted for membership.

(5) The application shall be complete in all respects.

Section 5. Review of Applications. (1) As soon as practicable after the administrator receives the application, he shall determine whether the application is complete or incomplete.

(a) If the application is incomplete, the administrator shall so notify the applicant and shall identify the additional information which is needed to make the application complete. The applicant may submit the corrected application, in whole or in part, and no additional application fee shall be required.

(b) If the application is complete, the administrator shall so notify the applicant in writing. The administrator shall evaluate the complete application and any other relevant information available to the administrator, and shall submit the evaluation to the commission. The application, the administrator's evaluation, and any other relevant information available to the commission, shall form the factual basis for the commission's decision on the application.

(2) The commission shall act upon the application as soon as practicable.

(a) If the commission approves the application, the administrator shall provide written notice to the applicant. The notice shall specify the rating which the applicant will receive upon membership, and shall state the membership fee required. The applicant shall submit the required membership fee. As soon as practicable after receipt of the membership fee, the administrator shall provide the applicant with an official certificate of membership which shall confer actual membership as of the date of the certificate. The certificate shall state the rating assigned to the member and also shall assign the member a unique membership number. The certificate shall be signed by the chairman of the commission and by the administrator.

(b) If the commission denies the application, the administrator shall provide written notice to the applicant, setting forth the reasons for denial. The notice of denial shall be signed by the chairman of the commission.

(3) The commission may defer its decision on an application if the applicant, any person who owns or controls the applicant, any person who is owned or controlled by the applicant, or any person who is under common ownership or control with the applicant has appealed a violation or cessation order or has a violation pending a penalty assessment and the violation or cessation order pending an appeal or penalty assessment would affect the applicant's eligibility or rating.

Section 6. Determination of Financial Standing. (1) If the commission or administrator prepares summaries or analyses of information contained in the applicant's financial statements, they [such documents] shall be kept confidential where necessary to insure the confidentiality of information contained in the financial statements.

(2) The financial standing of the applicant shall be determined based upon the financial information required in the application and other information available to the commission and cabinet. The commission may consider, but shall not be limited to, the following financial ratios and related financial information:

(a) The ratio of current assets to current liabilities;

(b) The ratio of net income to net sales;

(c) The ratio of total liabilities to stockholders' equity;

(d) The ratio of net income to owners' equity;

(e) The ratio of owners' equity to total assets; and

(f) The ratio of the sum of cash, marketable securities, and net receivables, to current liabilities.

Section 7. Determination of Reclamation Compliance Record. (1) Excellent compliance record. The applicant shall be deemed to have an excellent compliance record if the applicant, each person who owns or controls the applicant, each person who is owned or controlled by the applicant, and each person who is under common ownership or control with the applicant, meet all the criteria in this subsection.

(a) Has never committed a violation for mining without a permit under KRS Chapter 350;

(b) [(a)] Has never forfeited a bond or had a permit revoked under KRS Chapter 350;

(c) [(b)] Has never avoided forfeiture of a bond under KRS Chapter 350 because a surety performed reclamation work in order to avoid forfeiture;

(d) [(c)] Has never been determined to have demonstrated a pattern of willful violations pursuant to KRS 350.028(4), 350.130(3), or 350.465(3)(f);

(e) [(d)] Has not been issued more than one (1) [a] failure-to-abate cessation order pursuant to 405 KAR 12:020, Section 3(1)(a) in the most recent thirty-six (36) months of operation and the cessation order was abated as ordered by the cabinet in a timely manner and was not for a violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020;

(f) [(e)] Has not been issued more than one (1) cessation order under 405 KAR 12:020, Section 3(1)(b) in the most recent thirty-six (36) months of operation and the cessation order was abated as ordered by the cabinet in a timely manner;

(g) [(f)] Has not committed more than one (1) [a] violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020 in the most recent thirty-six (36) months of operation and the violation was abated as ordered by the cabinet in a timely manner, except the commission may for good cause and by unanimous vote exclude violations that have been terminated by the cabinet with no civil penalty;

(h) [(g)] Has not committed more than three (3) violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except [that] the commission may for good cause and by unanimous vote exclude the twelve (12) month period on one (1) permit during which the largest number of [such] violations occurred and may for good cause and by unanimous vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty; or

(i) [(h)] Has not had civil penalties under KRS 350.990, 405 KAR 7:090 or 405 KAR 7:095 remaining unpaid more than thirty (30) days after they were due and payable, within the most recent thirty-six (36) months of operation.

(j) [(i)] To the extent [such] information is available, the commission may take into account the applicant's performance in other states and on federal lands and Indian lands under criteria similar or equivalent to those in [paragraphs (a) through (h) of] this subsection.

(2) Acceptable compliance record. The applicant shall be deemed to have an acceptable compliance record if the applicant, each person who owns or controls the applicant, each person who is owned or controlled by the applicant, and each person who is under common ownership or control with the applicant, meet all the criteria in this subsection:

(a) Has never committed a violation for mining without a permit under KRS Chapter 350;

(b) [(a)] Has never forfeited a bond or had a permit revoked under KRS Chapter 350;

(c) [(b)] Has never avoided forfeiture of a bond under KRS Chapter 350 because a surety performed reclamation work to avoid forfeiture;

(d) [(c)] Has never been determined to have demonstrated a pattern of willful violations pursuant to KRS 350.028(4), 350.130(3), or 350.465(3)(f);

(e) Has not been issued more than four (4) cessation orders under 405 KAR 12:020, Section 3, in the most recent thirty-six (36) months of operation and each cessation order was abated as ordered by the cabinet in a timely manner and not more than one (1) was for a violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020;

[(d) Has not been issued a failure-to-abate cessation order pursuant to 405 KAR 12:020, Section 3(1)(a) in the most recent thirty-six (36) months of operation;]

[(e) Has not been issued a cessation order under 405 KAR 12:020, Section 3(1)(b) in the most recent thirty-six (36) months of operation;]

(f) Has not committed more than three (3) violations [one (1) violation] of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020 in the most recent thirty-six (36) months of operation, except the commission may for good cause and by unanimous vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty;

(g) Has not committed more than eight (8) violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except [that] the commission may for good cause and by unanimous vote exclude the twelve (12) month period on one (1) permit during which the largest number of [such] violations occurred and may for good cause and by unanimous vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty; or

(h) Has not had civil penalties under KRS 350.990, 405 KAR 7:090 or 405 KAR 7:095 remaining unpaid more than ninety (90) days after they were due and payable, within the most recent thirty-six (36) months of operation.

(i) To the extent [such] information is available, the commission may take into account the applicant's performance in other states and on federal lands and Indian lands under criteria similar or equivalent to those in [paragraphs (a) - (h) of] this subsection.

Section 8. Acceptance of Permit Areas Into Bond Pool. (1) The commission shall specifically set forth those permits, increments, or portions thereof, which have been accepted for coverage under the bond pool. Coverage shall not be effective unless so identified by the commission.

(2) Eligible portions of all permits issued to the member after the date of membership shall be covered by the bond pool.

(3) If a permit was issued to the member prior to the date of membership but has not been disturbed as of the date of membership, eligible portions of the permit shall be covered by the bond pool. The member shall substitute the appropriate rating based bond under KRS 350.735 for the bond originally posted for the permit area or increment.

(4) For existing permits or increments which have been disturbed as of the date of membership, the bond pool shall cover all eligible undisturbed portions of the [such] permits or increments in accordance with this subsection.

(a) A permit area or increment shall not be accepted for coverage if coal removal has been completed or substantially completed on the

permit area or increment. In determining whether coal removal has been substantially completed, the commission shall consider [such] factors such as the amount or percentage of coal yet to be extracted from the permit area or increment, the acreage or percentage of the permit area or increment yet to be disturbed, and the amount of time which likely would be required to complete coal extraction from the permit area or increment.

(b) Within thirty (30) days after the date of membership the member shall, for each existing permit, designate to the cabinet in writing a date, which shall be not later than ninety (90) days after the date of membership, on which eligible portions of the permit shall be covered by the bond pool. With the designation, the member shall also submit maps as required by the cabinet which clearly identify those portions of the permit area which the member expects to have disturbed as of the designated date and those portions which are expected to remain undisturbed as of that date. The cabinet may, on a case-by-case basis and for good cause, grant extensions to the thirty (30) and ninety (90) day periods in this paragraph.

(c) The cabinet shall recalculate the bond amount for the permit area or increment as two (2) bond amounts for two (2) new increments. One (1) new increment shall include the portion expected to be disturbed as of the designated date, and one (1) shall include the portion expected to remain undisturbed as of the designated date.

(d) The member shall, on or before the designated date, post a new bond in the amount determined by the cabinet for the increment containing the areas expected to be disturbed as of the designated date. This increment shall not be covered by the bond pool.

(e) The member shall, on or before the designated date, post a new rating based bond in the amount determined by the cabinet pursuant to KRS 350.735 for the increment containing the areas expected to remain undisturbed as of the designated date. This increment shall be covered by the bond pool. This increment shall not be disturbed until the bond required under this paragraph has been posted.

(f) Upon receipt and approval of acceptable bonds as required by paragraphs (d) and (e) of this subsection, and upon verification by the cabinet that the increment to be covered by the bond pool has not been disturbed, the cabinet shall release the bond originally posted for the permit area or increment.

(5) Any member that submits a preliminary permit application to the cabinet shall notify the bond pool administrator in writing within fourteen (14) calendar days of the submittal date.

Section 9. Production Records, Reporting, and Payment of Fees. (1)(a) Authorized representatives of the commission and administrator shall have access to all permit areas of the member for purposes of determining compliance with the requirements of this section.

(b) Each member shall make any book or record necessary to substantiate the accuracy of reports and payments available at reasonable times for inspection and copying by authorized representatives of the commission and administrator. The [Such] books and records shall include, but not be limited to, those required under subsection (2) of this section, books and records related to federal reclamation fees as required under 30 CFR Part 870, and books and records related to Kentucky coal severance tax as required under KRS Chapter 143. All information copied shall be kept confidential to the administrator and commission and their authorized representatives.

(c) Each member shall retain books and records for a period of six (6) years from the end of the calendar month in which a report was due.

(d) Authorized representatives of the administrator and commission shall have authority to examine records of second parties involved in the sale or transfer of the ownership of coal by the member, and shall have authority to examine the records of any party selling or transferring coal to the member.

(2) Each member shall maintain current books and records that separately contain the tons of coal extracted for each permit covered by the bond pool.

(3) Determination of fees. Fees shall be determined by the weight of the coal the first time the coal is weighed.

(a) The weight of the coal shall be the actual gross weight of the coal. Impurities, including water, that have not been removed prior to the first time the coal is weighed shall not be deducted from the gross weight.

(b) If the member combines surface mined coal and underground mined coal before the coal is weighed, the rate for surface mined coal shall apply unless the member can substantiate the tonnage produced by surface and underground mining by acceptable engineering calculations or other procedures which the cabinet may require.

(4) Reporting of tonnage and payment of fees.

(a) On forms provided by the cabinet each member shall report, for each permit covered by the bond pool, all coal tonnage extracted during the reporting period. Payment of fees shall accompany the report.

(b) The reporting and payment period shall be monthly. The report shall be submitted, and fees shall be paid, not later than the 20th day of the month which follows the reporting period. The report shall be submitted even if the member has zero production during the reporting period.

(c) Late report or payment. If a member fails to submit a report or payment on or before the due date, five (5) percent of the original fee due shall be added to the fee for each month or fraction thereof elapsing between the due date and the date on which the report or payment is submitted. In no case shall the penalty be less than ten (10) dollars.

(5) As soon as practicable after each report is received, the administrator shall examine it and shall notify the member of any underpayment or overpayment.

(a) If the amount of required fee as computed by the administrator is greater than the amount submitted by the member, the administrator shall notify the member, within thirty (30) days from the date the payment was received, of the additional amount to be paid; except that in the case of a failure to submit a report or of a fraudulent report, the examination and notification may occur at any time. Additional fee payments under this paragraph shall include a penalty of five (5) percent of the amount of the deficiency for each month or fraction thereof elapsing between the original due date and the date on which the payment is submitted.

(b) If the amount of required fee as computed by the administrator is less than the amount submitted by the member, the administrator shall notify the member, within thirty (30) days from the date the payment was received, of the amount of the overpayment. The member may receive credit for the overpayment against the next monthly payment or any subsequent payment.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. on Thursday, October 26, 1989, at the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should notify the cabinet in writing by October 21, 1989, five days prior to the hearing. The notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by October 21, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on October 26, 1989. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Villines

(1) Type and number of entities affected: This proposed amendment affects members and applicants for membership in the Kentucky Bond Pool as established at KRS 350.700-755. There are now 24 members and seven applications pending. The amendment allows the commission to defer action on an application for membership until violations and penalty assessments which would affect an applicant's eligibility or rating have been resolved. It relaxes the criteria which determine if the applicant has an "acceptable" or "excellent" reclamation compliance record, and allows the commission greater flexibility in applying these criteria. It requires members to notify the commission in writing upon submission of a preliminary permit application to the cabinet. It deletes from the definition of "member" the requirement that only permits held by members can be covered by the pool, for consistency with KRS 350.720(14) which allows pool coverage for nonmember permittees under the abandoned mine land enhancement program. It makes nonsubstantive changes in language and format as required by KRS Chapter 13A.

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

1. First year: This amendment will not impose any direct or indirect costs on those affected. The amendment will benefit some applicants by making it possible for them to qualify for membership whereas they previously could not qualify. Also, it will enable some applicants to qualify for an "excellent" compliance record rather than an "acceptable" compliance record. An "excellent" compliance record is necessary to qualify for an "A" rating, which subjects the member to a one-time membership fee of $1,000 and requires the member to post bond of $500 per acre, whereas a "B" rating requires a higher membership fee of $2,000 and a higher permit-specific bond of $1500 per acre.

2. Continuing costs or savings: There are no continuing costs which would result from the amendment. Members posting permit-specific bond of $500 per acre rather than $1500 per acre would continue to benefit from the lower cost of maintaining the smaller bond until the permit-specific bond is completely released at completion of Phase I reclamation.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors which would increase or decrease costs.

(b) Reporting and paperwork requirements: The amendment requires members to notify the commission in writing upon submission of a preliminary permit application to the cabinet. This is a simple notification and should not be burdensome to members in any way.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The amendment will not cause any direct or indirect costs or savings for the cabinet.

2. Continuing costs or savings: The amendment will not cause any continuing costs or savings for the cabinet.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The amendment will not affect the cabinet's reporting and paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered and rejected requiring considerably more information in the notification that members must provide to the commission upon submittal of a preliminary permit application to the cabinet. The information would have included the permit application number, the proposed acreage, the estimated tonnage, whether the permit would be bonded incrementally, and the type of bond the member would submit for the permit-specific bond. The cabinet concluded that the commission could obtain adequate information from the preliminary permit applications and from follow-up contact with the member, and that only a simple notification to the commission need be required by regulation.

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

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

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is

not appropriate for this amendment. The regulation being amended is not tiered. Regulated entities voluntarily subject themselves to regulation by applying for membership in the bond pool. The statutes which established the bond pool made certain distinctions among applicants and members based upon their length of experience of mining in Kentucky and their reclamation compliance record, but not based upon the size of operations. This amendment revises certain criteria by which applicants' and members' reclamation compliance records will be determined, but it is not appropriate to provide separate compliance criteria based on size of operations because all operations are equally subject to the reclamation requirements of the statutes and regulations. The other provisions of this amendment, which allow the commission to defer action until violations and penalty assessments have been resolved and require members to notify the commission upon submittal of a preliminary permit application to the cabinet, are provisions of such nature that unequal treatment based on size of operations would serve no beneficial purpose.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This amendment is not being promulgated in response to a direct federal mandate. There is no federal law, regulation or order which requires either this amendment or the regulation being amended. However, this amendment is subject to approval under 30 CFR 732.17 by the U.S. Department of Interior, Office of Surface Mining Reclamation and Enforcement, to insure it is in accordance with the 1977 federal surface mining act and consistent with the federal regulations under that Act. Both federal and Kentucky laws and regulations contain certain minimum requirements for performance bonds to guarantee reclamation of lands affected by mining operations. Federal regulations at 30 CFR 800.11(e) further authorize, subject to federal approval, alternative bonding systems which achieve two objectives - the alternative must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time, and the alternative must provide a substantial economic incentive for the permittee to comply with all reclamation provisions. This amendment pertains only to Kentucky's alternative, voluntary bond pool program (already approved by the OSMRE) through which qualified operators may fulfill a part of their bonding requirements.

2. State compliance standards. The amendment allows the bond pool commission to defer action on an application for membership until violations and penalty assessments which would affect an applicant's eligibility or rating have been resolved. It relaxes the criteria which determine if the applicant has an "acceptable" or "excellent" reclamation compliance record, and allows the commission greater flexibility in applying these criteria. It requires members to notify the commission in writing upon submission of a preliminary permit application to the cabinet. It deletes language from the definition of "member" for consistency with KRS 350.720(14).

3. Minimum or uniform standards contained in the federal mandate. As explained above, there is no federal mandate for this amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, it will not. As explained above, there is no federal mandate for this amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

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 [August] 15, 1989 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 04-00-02	Staff Training and Development
KSR 05-00-01	Officers' Daily Housing Security and Safety Log
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/ Psychiatric Information
KSR 07-00-02	Institutional Tower Room Regulations
KSR 07-00-04	Handling of PCB Articles and Containers
KSR 07-00-05	Proper Removal of Transformers
KSR 07-00-06	Asbestos Abatement
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family

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
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
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 09-00-29	Transportation of Inmates
KSR 10-00-01	Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records (Amended 9/15/89)
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 (Amended 9/15/89)
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 (Amended 9/15/89)
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	Medical and Dental Care
KSR 13-00-06	Infection Control [(Amended 8/15/89)]
KSR 13-00-07	Referral of Inmates Considered to Have Severe Emotional Disturbances
KSR 13-00-08	Institutional Laboratory Procedures
KSR 13-00-09	Institutional Pharmacy Procedures
KSR 13-00-10	Requirements for Medical Personnel
KSR 13-00-11	Preliminary Health Evaluation and Establishment of Inmate Medical Record
KSR 13-00-12	Vision Care/Optometry Services
KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 13-00-15	Medical Alert System
KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 14-00-01	Inmate Rights
KSR 14-00-02	A/C Center and Unit D Inmate Access to Legal Aide Services
KSR 14-00-04	Inmate Grievance Procedure
KSR 14-00-05	Inmate Marriages
KSR 14-00-06	Inmate Legal Aides
KSR 15-00-02	Regulations Prohibiting Immate Control or Authority Over Other Inmate(s)
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 (Amended 9/15/89)
KSR 15-00-08	Firehouse Living Area
KSR 15-00-10	Program Services for Special Housing Placement (Added 9/15/89)
KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel [(Added 8/15/89)]
KSR 15-01-02	Staff Operational Procedure [(Added 8/15/89)]
KSR 15-01-03	Inmate Rules and Regulations [(Added 8/15/89)]
KSR 15-01-04	Institutional Medical and Fire Safety Service: Unit Application [(Added 8/15/89)]
KSR 15-01-05	Institutional Inmate Services [(Added 8/15/89)]
KSR 15-01-06	Inmate Housing Criteria and Regulations, Honor Status and General Population [(Added 8/15/89)]
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
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 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations

KSR 20-00-01	Vocational School Referral and Release Process
KSR 20-00-03	Academic School Programs
KSR 20-00-04	Criteria for Participation in Jefferson Community College Program
KSR 20-00-08	Integration of Vocational and Academic Education Programs
KSR 21-00-01	Legal Aide Office and Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
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 15, 1989
FILED WITH LRC: September 15, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 23, 1989 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: 542 employees of the Kentucky State Reformatory, 1425 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 6:040. Kentucky State Penitentiary.

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 [June] 15, 1989 and hereinafter should be referred to as Kentucky State Penitentiary 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.

KSP 000000-06	Administrative Regulations
KSP 010000-04	Public Information and Media Communication
KSP 020000-15	Legal Assistance
KSP 030000-01	Inventory Records and Control
KSP 030000-04	Requisition and Purchase of Supplies and Equipment
KSP 030000-05	Inmate Personal Funds [(Amended 6/15/89)]
KSP 030000-06	Inmate Commissary Program [(Amended 6/15/89)]
KSP 040000-01	Management Information System
KSP 040000-02	Inmate Records
KSP 040000-08	Inmate Equal Opportunity Policy
KSP 050000-14	Searches and Preservation of Evidence (Amended 9/15/89)
KSP 060000-01	Special Security Unit
KSP 060000-02	Operational Procedures for Disciplinary Segregation, Administrative Segregation, Administrative Control and Behavioral Control Units
KSP 060000-04	Protective Custody Unit
KSP 070000-01	Hospital Services
KSP 070000-02	Sick Call
KSP 070000-03	Health Evaluations
KSP 070000-04	Consultations
KSP 070000-05	Emergency Medical Procedure
KSP 070000-13	Pharmacy Procedures
KSP 070000-14	Medical Records
KSP 070000-16	Psychiatric and Psychological Services
KSP 070000-17	Dental Services for Special Management Units
KSP 070000-19	Optometric Services
KSP 070000-20	Menu Preparation and Planning
KSP 070000-24	Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 070000-25	Food Service Inspections
KSP 070000-30	Therapeutic Diets
KSP 090000-01	Inmate Work Programs
KSP 090000-03	Correctional Industries
KSP 100000-02	Visiting Program

KSP 100000-03	Disposition of Unauthorized Property
KSP 100000-04	Inmate Grooming and Dress Code
KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 100000-06	Inmate Mail and Packages
KSP 100000-07	Inmate Telephone Access
KSP 100000-08	Behavioral Counseling Record
KSP 100000-09	Due Process/Disciplinary Procedures
KSP 100000-11	Authorized and Unauthorized Inmate Property
KSP 100000-14	Property Room: Clothing Storage and Inventory
KSP 100000-15	Uniform Cell Standards for Fire Safety, Sanitation and Security
KSP 100000-18	Inmate Grievance Committee Hearings
KSP 100000-20	Legal Services Program
KSP 100000-21	Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 110000-04	Preparole Progress Report
KSP 110000-06	General Guidelines of the Classification Committee
KSP 110000-07	Statutory Good Time Restoration
KSP 110000-08	Award of Meritorious Good Time
KSP 110000-10	Special Needs Inmates
KSP 110000-12	Unit Classification Committee - Inmate Work Assignments
KSP 110000-13	Classification Document
KSP 110000-14	Vocational School Placement
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-16	Consideration of Further Treatment Requirements for Inmates Prior to Release
KSP 110000-18	Functions of the Classification Committee
KSP 120000-04	Academic Education
KSP 120000-07	Community Center Program
KSP 120000-08	Inmate Furloughs
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 120000-31	Extended Furloughs
KSP 120000-32	Discharge of Inmates by Shock Probation
KSP 130000-10	Execution Plan

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 23, 1989 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: 359 employees of the Kentucky State Penitentiary, 788 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 15 [July 14], 1989 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
NTC 02-08-01	Inmate Canteen
NTC 02-10-01	Insurance Coverage
NTC 02-12-01	Inmate Personal Accounts
NTC 04-01-01	Training and Staff Development
NTC 04-04-01	Firearms and Chemical Agents Training
NTC 06-01-01	Offender Records [(Amended 7/14/89)]
NTC 06-01-02	Records - Release of Information [(Amended 7/14/89)]
NTC 06-01-03	Taking Offender Record Folders onto the Yard [(Amended 7/14/89)]
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
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
NTC 11-03-01	Food Services: General Guidelines (Amended 9/15/89)
NTC 11-04-01	Food Service: Meals (Amended 9/15/89)
NTC 11-04-02	Menu, Nutrition and Special Diets
NTC 11-05-02	Health Standards/Regulations for Food Service Employees
NTC 11-06-01	Inspections and Sanitation (Amended 9/15/89)
NTC 11-07-01	Purchasing, Storage and Farm Products
NTC 12-01-01	Institutional Inspections
NTC 12-02-01	Personal Hygiene for Inmates; Clothing and Linens
NTC 12-02-02	Issuance of Personal Hygiene Products
NTC 13-01-01	Emergency Medical Care Plan
NTC 13-01-02	Emergency and Specialized Health Services
NTC 13-02-01	Administration and Authority for Health Services
NTC 13-03-01	Sick Call and Pill Call
NTC 13-04-01	Utilization of Pharmaceutical Products
NTC 13-05-01	Dental Services
NTC 13-06-01	Licensure and Training Standards
NTC 13-07-01	Provisions for Health Care Delivery
NTC 13-08-01	Medical and Dental Records
NTC 13-09-01	Special Diets
NTC 13-11-01	Inmate Health Screening and Evaluation
NTC 13-12-01	Special Health Care Programs
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 9/15/89)
NTC 14-01-02	Receiving and Viewing of Video Tapes (Amended 9/15/89) [Video Viewing of Trials]
NTC 14-02-01	Inmate Grievance Procedure
NTC 14-03-01	Inmate Rights and Responsibilities
NTC 14-03-02	Board of Claims
NTC 14-04-01	Inmate Search Policy
NTC 15-01-01	Restoration of Forfeited Good Time
NTC 15-02-01	Due Process/Disciplinary Procedures (Amended 9/15/89)
NTC 15-02-02	Extra Duty Assignments
NTC 15-02-03	Hearing Officer
NTC 15-03-01	Rules for Inmates Assigned to Outside Detail
NTC 15-03-02	Rules and Regulations for General Population Dormitories
NTC 15-04-01	Inmate Identification
NTC 16-01-01	Mail Regulations
NTC 16-02-01	Visiting
NTC 16-02-02	Extended and Special Visits
NTC 16-02-03	Honor Dorm Visiting
NTC 16-03-01	Inmate Furloughs
NTC 16-05-01	Telephone Use and Control
NTC 17-01-01	Personal Property Control
NTC 17-01-02	Authorized Inmate Personal Property
NTC 17-01-03	Unauthorized Inmate Property
NTC 17-01-04	Disposition of Unauthorized Property
NTC 17-03-01	Assessment/Orientation
NTC 18-01-01	Preparole Progress Report
NTC 18-02-01	Classification
NTC 18-02-02	Classification - 48 Hour Notification
NTC 18-03-01	Special Notice Form
NTC 18-05-01	Transfers of Inmates
NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01	Inmate Work Program
NTC 19-01-03	Temporary Leave from Job Assignment
NTC 19-02-01	Correctional Industries
NTC 19-02-02	Guidelines for Correctional Industries
NTC 20-01-01	Academic School Program
NTC 20-02-01	Vocational School
NTC 20-02-02	Live Work Projects in Vocational School Classes
NTC 21-01-01	Library Services
NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01	Religious Services
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 [(Amended 7/14/89)]
NTC 26-01-01	Citizen Involvement and Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 23, 1989 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: 300 employees of the Northpoint Training Center, 918 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing

costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Proposed Amendment)

601 KAR 1:025. Transporting hazardous materials; permit.

RELATES TO: KRS 174.400 through 174.435, 49 CFR
STATUTORY AUTHORITY: KRS 174.410(2), 174.430(1), 49 CFR
NECESSITY AND FUNCTION: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources, shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.435. KRS 174.430(1) provides that the Secretary of the Transportation Cabinet is authorized to fix a reasonable fee, by regulation, to be paid by applicants for a general permit to transport radioactive materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of such permit. This regulation implements these statutory provisions.

Section 1. The hazardous materials transportation regulations adopted and issued by the United States Department of Transportation relating to the following subjects shall govern the transportation of hazardous materials within Kentucky:
(1) Title 49, Code of Federal Regulations, Part 171, authorized July 31, 1989 and effective April 2, 1990 [1, 1989]. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;
(2) Title 49, Code of Federal Regulations, Part 172, authorized July 31, 1989 and effective April 2, 1990 [January 2, 1989]. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for shipping papers, package marking, labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;
(3) Title 49, Code of Federal Regulations, Part 175, authorized June 19, 1989 and effective January 1, 1990 [1989]. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;
(4) Title 49, Code of Federal Regulations, Part 177, effective December 12 [January 2], 1989. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways; and
(5) Title 49, Code of Federal Regulations, Part 178, applicable June 12, 1989 and effective December 12 [April 1], 1989. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials.
(6) Title 49, Code of Federal Regulations, Part 180, effective December 12, 1989. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.

Section 2. (1) Title 49, Code of Federal Regulations, Part 173 authorized July 31, 1989 and effective April 2, 1990 [May 2 1989], is incorporated by reference but only as it is applicable to the shipment of hazardous materials by air or highway. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging.
(2) This material incorporated by reference is available for public inspection and copying in the Transportation Cabinet, Office of the Secretary, 10th Floor, State Office Building, Frankfort, Kentucky 40622. Office hours are from 8 a.m. to 4:30 p.m., local prevailing time on Monday through Friday.

Section 3. Applicants for an annual general permit to transport radioactive materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of such permit, shall pay to the Transportation Cabinet a fee of twenty-five (25) dollars. The applicant for a general permit shall submit his application to the Department of Vehicle Regulation on forms prescribed and furnished by the department.

JEROME LENTZ, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: August 16, 1989
FILED WITH LRC: September 1, 1989 at 2 p.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on

October 24, 1989 at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by October 19, 1989 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until October 19, 1989. Send written notification of intent to attend the public hearing or written comments on the 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 transporters of hazardous materials in Kentucky.
(a) Direct and indirect costs or savings to those affected: A few carriers will have to replace cargo tankers which do not meet the new federal requirements. However, the industry has been working with US DOT since 1985 to prepare the new requirements. US DOT believes there are few cargo tankers actually in operation which will not meet the new requirements.
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: A change in the federal regulation adopted mandates new requirements for emergency response information on shipping papers. Another change requires any transporter involved in a hazardous materials incident to use a standard form to report the incident to US DOT and to retain copies of those forms for at least 2 years.
(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: Two alternatives exist to the regulation amendment as proposed. The do-nothing alternative was rejected because of the requirement in KRS Chapter 174 that the federal regulations be adopted. The new federal regulations, even those not yet required are proposed to be adopted because all changes are currently allowed by US DOT. We don't want a carrier to be cited for complying with the new federal requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal government does not mandate that hazardous materials be regulated on an intrastate basis. However, KRS 174.410 mandates the adoption of 49 CFR to carry out the intent of KRS 174.400 to 174.435.
2. State compliance standards. The state regulations are only applicable to the transportation of hazardous materials by highway and air. Pipelines, water and rail are specifically excluded by the authorizing statute.
3. Minimum or uniform standards contained in the federal mandate. The federal regulations include regulation of hazardous materials by pipeline and rail. Those parts of the federal regulations are omitted or amended to exclude pipeline and rail from that adopted in this administrative regulation.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes a small permit fee not found in the federal regulations.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The permit fee is allowed by KRS 174.430.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of the Superintendent
(Proposed Amendment)

701 KAR 5:060. Code of ethics for state testing program.

RELATES TO: KRS 158.650 to 158.750
STATUTORY AUTHORITY: KRS 156.070, 158.670
NECESSITY AND FUNCTION: KRS 158.650 to 158.750 mandate an annual statewide basic skills testing program, for designated grades, the result of which are to be used to assure that all public school students are acquiring appropriate skills; to aid districts in developing educational improvement plans; and to identify school districts which are educationally deficient. Such statutes also require the Department of Education to select and purchase appropriate tests and implement the statewide testing program. This regulation is necessary to fulfill the intent and purpose of the Educational Improvement Act and to promote the integrity of the testing program by providing guidelines for the administration of the statewide assessment program at the classroom, school, and district levels and by providing required procedures and penalties for reported and confirmed violations.

Section 1. (1) Each local district board of education shall assure that the statewide assessment program required by KRS 158.650 to 158.750 is administered in accordance with the

guidelines developed by the Kentucky Advisory Committee for Educational Improvement and approved by the State Board for Elementary and Secondary Education. The guidelines listed in this section comprise the "Code of Ethics for the State Testing Program."

(2) Each local superintendent of schools, in cooperation with the district's testing coordinator and school principals, is responsible for implementing the state testing program in the local school district. The Department of Education shall develop and disseminate district-based certification forms, school-based certification forms, and classroom-based certification forms to be signed by local district superintendents, district testing coordinators, principals, and teachers. These forms shall certify that the following expectations in the Code of Ethics have been met at the local district level:

(a) Intentional teaching the test. Specific test items shall not be intentionally taught. This restriction includes any manner of intentionally teaching test items during the school day or through homework assignments ranging from teachers remembering a single test item from an in-service session through manually or mechanically copying the actual test items. Intentionally changing a word, a phrase, or a distractor in a test item and utilizing it in any manner during the instructional process is a violation of the code. The intentional utilization of any test item from any form of the test in any manner is a violation of the Code of Ethics.

(b) Adopted textbooks, practice tests and reinforcement materials. The use of adopted textbooks, practice tests and reinforcement materials developed by major test companies and textbook publishers are appropriate. Materials and documents developed and published by the Kentucky Department of Education are also appropriate. Teacher developed materials are appropriate as long as such materials do not intentionally violate the teaching of the test provisions.

(c) Teaching concepts measured by the test. It is appropriate for teachers, principals, and supervisors to be knowledgeable of the skills or concepts being tested and to provide instruction directed toward improving student knowledge in these areas.

(d) Professional preparation.

1. Before administering the test, principals and appropriate central office personnel shall become thoroughly familiar with the testing schedule, the test content, and the directions for test administration. Local district personnel shall read the directions for completing answer sheets and administering the test, follow specific directions for administering each test, make sure students understand what they are to do before beginning the test, monitor students as they work on the test, and allow time for questions from students before beginning the test.

2. The review of test content and test administration procedures by teachers under a controlled situation such as an in-service training activity as a part of a faculty meeting is encouraged. If test booklets are made available to teachers and other appropriate personnel during training sessions, no written notes shall be made with regard to specific test items, and all test booklets shall be accounted for after each session. Teachers shall [are] not [to] be given a permanent copy of the test.

(e) Scheduling the test. Mandated tests shall be scheduled between the 160th and 170th instructional day of the school year. Tests shall be scheduled so there will be sufficient time to complete a subtest by the end of the testing session. Students taking the test shall not be subject to distractions.

(f) Test storage. All tests shall be stored in a secured central location. Each school district shall implement an accounting system for each test, preferably a number system by level. The district's test coordinator and the local superintendent are responsible for test storage and security.

(g) Test distribution. Tests shall be distributed to schools by grade or number of students no more than five (5) working days prior to test administration. This allows time for professional preparation and distribution to individual classroom teachers. The school principal, in cooperation with the district test coordinator, is responsible for test storage and security once the tests are distributed to each school. Tests shall be returned to the central location no later than three (3) days after all test administration is completed. The district test coordinator shall implement an accounting system from the central location to the school and back to the central location. The system shall require signatures of the principal and the district test coordinator.

(h) Timing the test. Timing of the test shall be in compliance with the specified time limits. Teachers and principals, in cooperation with the district testing coordinator, are responsible for implementing and monitoring the specified time limits. Any deviation from the time limits is a violation of the code.

(i) Test administration. During test administration, teachers or proctors shall check to see that students are marking answers in the correct manner and assist students who are not marking on the designated portions of the answer document. After such problems have been resolved, the only assistance given shall be in the mechanics of taking the test. The teacher or proctor shall make sure that all students understand the directions for taking the test. The teacher or proctor may assist students with mechanical tasks, such as helping a student find the proper location on the answer sheet; however, they shall provide no assistance that will inadvertently indicate an answer, such as pointing out the reasoning behind an item or referring to classwork. Indicating a correct response in any manner is a violation of the code.

(j) Populations to be tested. Students legally identified for special education shall be tested under the mandate of the Educational Improvement Act as amended unless specific parental permission has been obtained through the admissions and release committee procedures to exempt a child from state mandated testing. Local school districts are not permitted to develop separate summaries for special education students. A district administrator, with the advice of other staff members, may exclude from the assessment those students who are incapable of taking the assessment because the student:

1. Is a native speaker of a language other than English;

2. Is classified by the school as limited

English proficient; or

3. Has been enrolled in an English-speaking school (not including a bilingual education program) for less than two (2) consecutive years. [Students lacking proficiency in the English language to the extent that they are taught in a language other than English may be exempted from the state mandated testing program. All students so exempted shall be reported by name and grade in conjunction with the central office certification form.]

(k) Collection and storage. The principal is responsible for collecting and organizing answer sheets at the school level. Answer sheets shall not be altered for any reason (with the exception of erasing stray marks and darkening responses and for the purpose of coding the student descriptive data as directed by the Kentucky Department of Education) or in any manner by the teacher or principal. The district test coordinator is responsible for collecting and organizing answer sheets at the local district level. Answer sheets shall not be altered for any reason (with the exception of erasing stray marks and darkening responses and for the purpose of coding the student descriptive data as directed by the Kentucky Department of Education) or in any manner by the district test coordinator including any personnel who may be assisting the coordinator. Altering answer sheets in any manner at the classroom, school, or district level (with the exception of erasing stray marks or darkening responses and for the purpose of coding the student descriptive data as directed by the Kentucky Department of Education) is a violation of the code and invalidates the data.

(l) Publishing the information. KRS 158.690 and the related annual performance report specify in detail the requirements for publishing test information. Any revisions or deviations from the format or requirements for publishing test information as required by statute and the annual performance report are violation of the code.

Section 2. Each local district board of education shall submit to the Department of Education, at the same time test answer documents are submitted, a certification that the district has adhered to the Code of Ethics set by this regulation. The Department of Education shall develop and disseminate the certification forms. Local district certification shall be submitted by the district as a prerequisite to the scoring of local district test answer documents.

Section 3. Each local district, and the Department of Education, shall adhere to the following procedures for any cases involving alleged exceptions to compliance with the provisions of the following:

(1) When the Department of Education or a local district receives a written and signed allegation that a violation of the testing ethics has occurred in a local district, the Superintendent of Public Instruction shall notify the superintendent of the local district, and when an alleged violation has been reported, the local district shall fully investigate the alleged violation in accordance with appropriate due process procedures, and:

(a) If it is determined that the alleged violation did not occur, the local district shall keep in a local file a report covering the details of the alleged violation, the investigative steps taken, and the results of the investigation. In addition, a letter shall be forwarded to the Superintendent of Public Instruction concerning the results of the investigation.

(b) If it is determined that the alleged violation did occur, the local district shall submit a written explanation to the Superintendent of Public Instruction that covers the conditions surrounding the violation, the action taken to eliminate further instances of ethics violations and the specific action taken against those causing or committing the violation. Actions against those causing or committing the violation may include, but not be limited to, written reprimands in the personnel and certification files, suspension, and dismissal. If the action taken is not at least a written reprimand, then a full report justifying the action taken shall be filed with the Superintendent of Public Instruction.

(2)(a) Upon receipt of the written report from the local district, the Department of Education shall review the written document, and if the violation is confirmed, such violation shall be confirmed in the summary test score publications, and the district scores that are affected by the violation shall be deleted from those publications and the local district shall note the situation in its Annual Performance Report. The local district shall be notified by the Department of Education that the test results of students affected by any violation shall either be destroyed (with a letter entered into the student cumulative folder explaining the absence of the test report) or a letter attached to the test report explaining which portions of the data are invalid due to the violation.

(b) The Superintendent of Public Instruction shall present a written report of Code of Ethics violations and make recommendations to the Educational Improvement Act Advisory Committee and the State Board for Elementary and Secondary Education.

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: September 13, 1989

FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, October 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board for Elementary and Secondary Education at its September meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before October 20, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: H. M. Snodgrass

(1) Type and number of entities affected: Local education agencies (177).

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

1. First year: N/A

2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: LEAs will have to list students categorized in an English as a Second Language Program (ESL) and who are exempt from the state mandated test and send the report to the KDE.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: KDE will compile LEA reports. KDE will have to report changes of regulation to LEAs.
(3) Assessment of anticipated effect on state and local revenues: None other than a $50 printing and mailing charge.
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(Proposed Amendment)

702 KAR 4:050. Building sites; inspection, approval.

RELATES TO: KRS 156.160, 162.010, 162.060
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to prescribe regulations relative to sanitary and protective construction of public school buildings; KRS 162.010 requires fee simple title to school property; and KRS 162.060 requires plan and specification approval for school construction by the Superintendent of Public Instruction. This regulation provides for the location of school buildings in accordance with the program approved by the Superintendent of Public Instruction.

Section 1. Definitions. (1) In determining the location of an acceptable site, the term "in the vicinity of," as used in educational facilities plans, shall be defined as within a one (1) mile radius of a specific point or the main highway intersection (center) of a city or one (1) mile beyond any two (2) specific points referenced in the facility plan priority. No site shall be approved which exceeds the one (1) mile limit.
(2) A "major renovation" is a renovation of three (3) or more building systems in a permanent center with a total cost of more than twenty (20) percent of the current replacement cost of the building. The building may be the entire permanent center or a clearly definable portion of the center (such as, 1973 addition, senior high wing, or physical education facility). The renovation shall have been identified in a district facility plan as a priority in order to be allowed. Building systems are defined as foundations, exterior walls, roofing, ceilings, structural, mechanical (HVAC), electrical (including lighting), plumbing, sewage and storm water disposal, doors and hardware, windows, floor coverings, and fixed equipment. The renovation shall also meet the criteria set forth in the school durability section of the school facilities construction criteria adopted by 702 KAR 1:010 and consist of work that extends the useful life of the structure and work that is not considered as routine maintenance.

Section 2. [1. (1)] The Superintendent of Public Instruction shall cause an inspection to be made of each proposed school building site or proposed real property acquisition including site addition upon written request of the local board of education. Site approval shall be given by the Superintendent of Public Instruction prior to any purchase or commitment to purchase, except that an option-to-purchase which in no way obligates purchaser, may be executed to assure availability of site during this approval procedure. All school sites shall be in agreement with the current school [educational] facilities plan except that a local board of education may request approval of the Superintendent of Public Instruction to acquire a school site in a rapidly growing area where the existing school(s) cannot accommodate the increased student population and a new school may be proposed in a future facility plan by the Department of Education. However, no site preparation or construction shall take place prior to the time such proposed new school is a part of the facility plan. The site shall have the approval of the Superintendent of Public Instruction prior to initiation of an application for approval of a construction project.
[(2) In determining the location of an acceptable site, the term "in the vicinity of," as used in educational facilities plans, shall be defined as within a one (1) mile radius of a specific point or the main highway intersection (center) of a city or one (1) mile beyond any two (2) specific points referenced in the facility plan priority. No site shall be approved which exceeds the one (1) mile limit.]

Section 3. [2.] The minimum size of school sites shall be as follows:
(1) Elementary school: five (5) acres plus an additional acre for each 100 or fraction of 100 students of anticipated enrollment.
(2) Middle school, junior high school, and high school: ten (10) acres plus an additional acre for each 100 or fraction of 100 students of anticipated enrollment.
(3) Any deviation from subsections (1) and (2) of this regulation shall be made only after investigation and approval by the Superintendent of Public Instruction.

Section 4. [3.] Prior to contracting for the purchase of a school site, it shall be determined by the local board of education that the following conditions can be met and assurances will be given in writing to the Superintendent of Public Instruction prior to his approval to acquire the site.

(1) A fee simple title shall be obtained in conformance with KRS 162.010. A copy of the deed and attorney's title certificate shall be furnished the Superintendent of Public Instruction for approval of the title to the site.

(2) Assurances that an adequate water supply and sewage disposal can be approved by the Department of Natural Resources and Environmental Protection and the Fire Marshal's office having jurisdiction.

(3) Assurances of adequate access to public roads or streets to accommodate anticipated school traffic.

(4) A copy of a plat of the site survey showing any easements prepared by a registered land surveyor.

(5) Certification by a registered architect, engineer or land surveyor that the site or site addition is above the 100-year flood plain. New building construction, additions or major renovation to existing buildings on land presently owned shall be approved only if it is designed in such a manner that all instructional space and the building systems are at an elevation above the 100-year flood plain. [A "major renovation" is a renovation of three (3) or more building systems in a permanent center with a total cost of more than twenty (20) percent of the current replacement cost of the building. The building may be the entire permanent center or a clearly, definable portion of the center (such as, 1973 addition, senior high wing, or physical education facility). The renovation shall have been identified in a district facility plan as a priority in order to be allowed. Building systems are defined as foundations, exterior walls, roofing, ceilings, structural, mechanical (HVAC), electrical (including lighting), plumbing, sewage and storm water disposal, doors and hardware, windows, floor coverings, and fixed equipment. The renovation shall also meet the criteria set forth in the School Durability section of the School Facilities Construction Criteria adopted by 702 KAR 1:010 and consist of work that extends the useful life of the structure and work that is not considered as routine maintenance.]

Section 5. [4.] (1) A local board of education desiring approval of a site shall request such approval of the Superintendent of Public Instruction. If all assurances and requirements are in order and conform to [meet the limitations of] the facility plan, except as noted in Section 2 of this regulation, the Superintendent of Public Instruction may approve the site. If questions exist, the Superintendent of Public Instruction shall require the requesting school district to contract with an architectural or engineering firm licensed to operate in the Commonwealth of Kentucky. The firm designated by the Superintendent of Public Instruction shall be from a list approved by the State Board for Elementary and Secondary Education contracted to perform a study of the [such] proposed site(s). This [Such] study shall include the following: estimated costs for site development including utilities to provide required infrastructures, necessary road access including traffic impact and analysis, geotechnical report including a soils analysis and requirements for soils compaction or special footing requirements, and any hazardous conditions. Cost of the study shall be borne by the requesting school district and shall be payable upon receipt and approval of same by the Superintendent of Public Instruction. The State Superintendent of Public Instruction may waive the requirements for the study in expansions of existing school sites where proposed construction is not anticipated. The architectural or engineering firm conducting the study shall not be eligible to contract to design any construction activities for that priority project. Acquisition and site preparation costs of the local school board [noted above] shall be ten (10) percent or less of the [than] maximum budget for the project, unless authorized by the State Board for Elementary and Secondary Education. [Such costs exceeding ten (10) percent the maximum budget shall require the approval of the State Board for Elementary and Secondary Education.] Sites already owned by the school district that meet criteria of the facility plan shall be included in site approval requests and may be subject to the required study.

(2) Once a site has been designated an approvable site, the local board of education shall obtain a written option of sufficient duration approved by the Superintendent of Public Instruction on all approvable sites under consideration until final approval of a specific site has been made in writing by the Superintendent of Public Instruction.

(3) In the event that a local board of education has exhausted the time periods established by the School Facility Construction Commission and has not been able to identify a site that meets the appropriate criteria for approval, the State Superintendent of Public Instruction shall take the action necessary based upon the required site investigation to identify and approve a school site. This identification process shall include requesting the school district to contract with an architectural or engineering firm as described above for site analysis.

Section 6. [5.] A local board of education shall obtain title insurance, in an amount equal to the current appraised value of the property, from an acceptable title insurance company on property acquired for a school site in compliance with KRS 162.010. A copy of the title insurance shall be forwarded with a copy of the fee simple deed to the Superintendent of Public Instruction within sixty (60) days from the date of the deed.

Section 7. [6.] A permanent monument (four (4) by four (4) by eighteen (18) inches deep concrete with a brass pin) shall be set in the boundary line of the site at a point which will provide a starting point for initial and final plot of metes and bounds which will circumscribe the site.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 13, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, October 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board for Elementary and Secondary Education at its September meeting. Those persons wishing to

provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before October 20, 1989. 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: Mike Luscher
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: Local districts would be required to pay cost of study.
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(Proposed Amendment)

702 KAR 7:030. Census.

RELATES TO: KRS 159.170, 159.240, 159.250, 159.260
STATUTORY AUTHORITY: KRS 156.070, 156.160, 159.170, 159.250, 159.260
NECESSITY AND FUNCTION: KRS 159.170 requires a local district from which a child has withdrawn because of change of residence to advise the district to which the child has moved of such on forms prescribed by the State Board of Education; KRS 159.240 requires each board of education to maintain a permanent and continuing school census; KRS 159.250 describes the nature of the school census; and KRS 159.260 requires such a report to be provided annually to the Superintendent of Public Instruction. This regulation is necessary to assure uniformity in keeping and reporting the school census.

Section 1. The director of pupil personnel of each school district, working under the superintendent of schools, shall institute and maintain a complete, accurate, permanent and continuous census of all enrolled children between the ages of five (5) and twenty-one (21) enrolled in the public schools in the district. A child's age is between five (5) and twenty-one (21) when the child has reached his fifth birthday and has not passed the 21st birthday. The school census shall specify the name, date of birth and sex of each child; the name, nationality and post office address of each parent, guardian or custodian of the child; the school district in which the child resides; and the school in which the child is enrolled. The school shall be described by number and name. The census shall contain any other data required by the Superintendent of Public Instruction. Each board of education shall furnish its director of pupil personnel with assistance it deems necessary for the institution and maintenance of the census. [The annual school census report shall be completed and a copy filed with the State Department of Education on or before June 1 of each year as provided by KRS 159.260. The report shall include all children legally residing in the local school district who will, on July 1 following, be between the age of five (5) and eighteen (18) years.]

Section 2. The requests for records and other information involving the transfer of pupils as required by KRS 159.170 shall be processed by the local superintendent or his designee. In most cases, the designee will be the director of pupil personnel or the school principal.

Section 3. Form RR-4 may be used to comply with Section 2 of this regulation and with KRS 159.170. Local boards of education may adopt an alternative form and/or process to comply with KRS 159.170. Any problems concerning the transfer of pupils shall be reported to the Division of Pupil Attendance, State Department of Education.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 13, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, October 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board for Elementary and Secondary Education at its September meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before October 20, 1989. 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: Tony Collins
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: -0-
2. Continuing costs or savings: -0-
3. Additional factors increasing or decreasing costs (note any effects upon competition): -0-
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: -0-

1. First year: -0-
2. Continuing costs or savings: -0-
3. Additional factors increasing or decreasing costs: -0-

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: -0-

(4) Assessment of alternative methods; reasons why alternatives were rejected: -0-

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: -0-

(a) Necessity of proposed regulation if in conflict: Rewrite 702 KAR 7:030 to agree with KRS 159.250.

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

(6) Any additional information or comments: No

TIERING: Was tiering applied? No. Not necessary; does not affect other certifications.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:005. Kentucky standards for preparation-certification of professional school personnel program approval.

RELATES TO: KRS 161.020, 161.025, 161.030

STATUTORY AUTHORITY: KRS 156.070, 161.030

NECESSITY AND FUNCTION: KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.025 gives the Kentucky Council on Teacher Education and Certification the duty to develop and recommend policies and standards relating to teacher preparation and certification; and KRS 161.030 rests the certification of teachers and other school personnel and the approval of teacher-preparatory colleges and universities and their curricula with the State Board of Education. This regulation establishes the standards and procedures which are to be used for the approval of the various teacher preparation programs offered by the colleges and universities, and where applicable, these curriculum standards are consistent with the Program of Studies as incorporated in 704 KAR 3:304; and this regulation also establishes procedures and necessary justifications for future development of new preparation-certification programs.

Section 1. Pursuant to the statutory authority placed upon the Superintendent of Public Instruction, the State Board for Elementary and Secondary Education, and the Kentucky Council on Teacher Education and Certification under KRS Chapter 161, there is hereby devised, created, and incorporated by reference the Kentucky Standards for the Preparation-Certification of Professional School Personnel, which shall include the standards and procedures for the approval of college and university curricula for the preparation programs.

Section 2. The Kentucky Standards for the Preparation-Certification of Professional School Personnel are hereby amended, and the amended document is hereby incorporated by reference and identified as the Kentucky Standards for the Preparation-Certification of Professional School Personnel, revised September [July], 1989. A copy of this document can be inspected, copied and obtained from the Office of Instruction, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Kentucky, 8 a.m. - 4:30 p.m., Monday-Friday.

Section 3. Any proposal for the development by the Council on Teacher Education and certification of a program of preparation-certification for a new position shall be evaluated in writing by the office of the Superintendent of Public Instruction on the basis of the following criteria:

(1) There are compelling reasons for establishing a preparation-certification program. Alternate procedures for insuring professional competence for the position are either not feasible or are not appropriate. The likelihood of unsatisfactory practices represents too high a risk for noncertification alternatives.

(2) A distinctive and specific body of knowledge exists for the new position which is not likely to be attained without a specific preparation-certification plan. The body of knowledge is sufficiently extensive for a program of preparation - twelve (12) semester hours of credit or more - rather than something that can be earned in miscellaneous noncredit experiences.

(3) There are pupils having unique characteristics which require the teacher to have specialized knowledge and skills or there is a need for special services for which unique professional preparation is required.

(4) There is a sufficient demand for the training for this position to warrant the development of preparation-certification programs at one (1) or more Kentucky teacher education institutions and for sustaining these programs over a period of several years.

(5) The preparation-certification requirement is cost effective in terms of the anticipated benefits to the local school district.

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: September 13, 1989

FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, October 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board for Elementary and Secondary Education at its September meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before October 20, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

For TEC 75.0 & 77.0 refer to Regulatory Impact Analysis for 704 KAR 20:130 & 704 KAR 20:530

respectively.
For TEC 88.5 and 113.0 refer to Regulatory Impact Analysis for 704 KAR 20:100 and 704 KAR 20:540 respectively.
(1) Type and number of entities affected: TEC 12.2: Approximately 3,000 students annually entering teacher education. 26 institutions of higher education.
(a) Direct and indirect costs or savings to those affected: Costs to institutions associated with administering the tests and costs to individuals associated with taking the test and passing.
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: Score reports have to be generated and recorded in student files for review by admissions committee.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional costs.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Review and file institutional policy on test-retest of exam.
(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: TEC 12.2 contains provisions for alternate tests to determine attainment of basic skills for admission to teacher education. Basic skills in spelling, language, reading and mathematics are essential for candidates to be successful in teacher education.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:100. Administrators and supervisors.

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 for Elementary and Secondary [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 appropriate certificates for administration and supervision and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) The Professional Certificate for School Administration and Supervision shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary [of] Education regulations to an applicant who has completed the approved program of preparation for one (1) of the school leadership positions - elementary school principal, middle school-junior high school principal, secondary school principal, supervisor of instruction, or school superintendent - at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.
(2) The Professional Certificate for School Administration and Supervision shall be endorsed for the specific position for which the program of preparation has been completed. Once the certificate has been issued and endorsed for one (1) position it may be further endorsed for any of the other school leadership positions upon completion of the corresponding program of preparation. The Professional Certificate for School Administration and Supervision may also be endorsed to show other programs of preparation-certification for which the holder is qualified.
(3) As a prerequisite to the issuance of the Professional Certificate for School Administration and Supervision with an endorsement for the position of school superintendent the applicant shall have completed five (5) years successful school teaching [and/]or school administrative experience, or a combination thereof. As a prerequisite to the issuance of the certificate with an endorsement for any of the other school leadership positions the applicant shall have completed three (3) years of successful teaching experience.
(4) The duration of the Professional Certificate for School Administration and Supervision shall be for continuing service.
(5) Effective with the fall term of the 1988-89 academic year teacher education institutions shall not admit applicants to any of the preparation programs described in subsections (1), (2), (3), and (4) of this section; instead, applicants shall apply for admission to any one of the Professional Certificates for Instructional Leadership as described in these regulations. Persons admitted to any one of the preparation programs for the Professional Certificate for School Administration and Supervision must complete the program by September 1, 1992.

Section 2. (1) The Professional Certificate for School Administration and Supervision, endorsed for secondary school principal, may be

endorsed for a one (1) year period for the position of elementary school principal upon completion of at least eight (8) semester hours graduate credit selected from the endorsement curriculum described in TEC 88.1, Section 2, Kentucky Standards for the Preparation-Certification of Professional School Personnel, and upon recommendation from the superintendent of the local district in which the applicant is to be employed as an elementary school principal. The endorsement may be extended for subsequent years upon completion of at least six (6) semester hours graduate credit annually until the total program has been completed.

(2) The older type certificates which are still in force and valid for the position of secondary school principal may be endorsed for the position of elementary school principal in accordance with the same provisions outlined in subsection (1) of this section.

(3) Any certificate currently in force and valid for high school principalship, grades 7-12, shall be valid for any sequential combination of grades 5-12 which includes any grades 7-12.

Section 3. Persons holding a valid certificate for principalship, supervision, or superintendency issued under the curricula in effect prior to September, 1970, shall not be required to hold a standard teaching certificate as a prerequisite to qualify for any of the administrative endorsements for the Professional Certificate for School Administration and Supervision.

Section 4. The provisions of Sections 1, 2, and 3 of this regulation shall expire on September 1, 1992. Persons engaged in any program of preparation described in Sections 1, 2, and 3 of this regulation shall [must] complete the preparation by that date or else become subject to the provisions related to the Professional Certificate for Instructional Leadership.

Section 5. (1) The Professional Certificate for School Administration and Supervision endorsed for Director of Pupil Personnel 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 for this position at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel, TEC 88.5.

(2) The Professional Certificate for School Administration and Supervision may also be endorsed to show other programs of preparation-certification for which the holder is qualified.

(3) As a prerequisite for the endorsement for Director of Pupil Personnel, the applicant shall have completed at least three (3) years of successful teaching experience.

(4) The duration of the Professional Certificate for School Administration and Supervision endorsed for Director of Pupil Personnel shall be for continuing service.

(5) Effective with the 1991-92 academic year, teacher education institutions shall not admit applicants to the preparation program for the Professional Certificate for School Administration and Supervision endorsed for Director of Pupil Personnel; instead applicants shall apply for admission to the Professional Certificate for Administrator of Pupil Personnel Services. Persons admitted to the Professional Certificate for School Administration and Supervision endorsed for Director of Pupil Personnel shall complete the program by September 1, 1994.

Section 6. In the event that a person holding continuing certification for the position of director of pupil personnel cannot be secured by the local board of education either locally or from a listing of available personnel supplied by the Department of Education, a one (1) year certificate for director of pupil personnel may be issued at the request of the local board of education to a person who holds a master's degree, a classroom teaching certificate, and has completed at least two (2) years of successful teaching experience.

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: September 13, 1989

FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, October 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board for Elementary and Secondary Education at its September meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before October 20, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: Approximately 50 individuals currently enrolled in preparation/certification program for Director of Pupil Personnel endorsement and five institutions of higher education.

(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: Individuals currently enrolled in this program must complete it by September 1, 1994.

(2) Effects on the promulgating administrative body: Inform preparing institutions regarding phase-out of current program.

(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: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The certification program for Director Pupil Personnel is being replaced by an equivalent

certification program leading to certification as Administrator Pupil Personnel.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:130. Guidance counselors.

RELATES TO: KRS 161.020, 161.025, 161.030

STATUTORY AUTHORITY: KRS 156.070, 161.030

NECESSITY AND FUNCTION: KRS 161.020, 161.025, 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 for Elementary and Secondary [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 with the 1991-92 academic year, teacher education institutions shall not admit applicants to the program of preparation for the endorsement for provisional certification for the position of guidance counselor as described in this section; instead, applicants shall apply for admission to the new curriculum for the Provisional Certificate for Guidance Counselor described in 704 KAR 20:530. Persons admitted for endorsement for provisional certification for guidance counselor shall complete the program by September 1, 1994.

(2) [(1)] An endorsement as provisional certification for the position of guidance counselor shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary [of] Education regulations to an applicant who holds certification as an elementary or secondary teacher and has completed at least one (1) year of full-time classroom teaching experience and 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 by 704 KAR 20:005, TEC 75.0.

(3) [(2)](a) The endorsement as provisional certification for the position of guidance counselor shall be valid for the same grade levels as the teaching certificate used as the base for the endorsement. Applicants using an elementary school certificate as the base shall follow the curriculum emphasis provided for the elementary level and applicants using a secondary teaching certificate as the base shall follow the curriculum emphasis provided for the secondary level as provided in the state standards.

(b) [Beginning with the 1987-88 school year and thereafter,] An endorsement for serving as guidance counselor in grades seven (7) through twelve (12) may be extended to grades five (5) through twelve (12) upon completion of the following course work at the graduate level:

1. Three (3) semester hours of study related to human growth and development with emphasis on pupils in the age range encompassed by the middle grades, five (5) through eight (8); and

2. Three (3) semester hours of credit in the middle grade school curriculum.

(4) [(3)] The endorsement as provisional certification for the position of guidance counselor shall have a duration period of five (5) years and may be renewed upon completion of a minimum of eight (8) semester hours of graduate credit every five (5) years selected from the program leading to the standard guidance certificate.

Section 2. (1) Effective with the 1991-92 academic year, teacher education institutions shall not admit applicants to the program of preparation for the standard guidance certificate as described in this section; instead, applicants shall apply for admission to the new curriculum for the Standard Certificate for Guidance Counselor described in 704 KAR 20:530. Persons admitted to the standard guidance certificate program as described in this regulation shall complete the program by September 1, 1994.

(2) [(1)] The standard guidance certificate shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary [of] Education regulations to an applicant who has completed at least one (1) year of experience as a full-time guidance counselor with provisional certification as a guidance counselor and 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.

(3) [(2)] The duration period for the standard guidance certificate shall be for continuing service.

Section 3. Certification for the position of guidance counselor properly issued prior to September 1, 1970, [and based on preparation programs described under 42.380 of former regulations] may be renewed under the following provisions:

(1) Provisional certification issued initially for a period of ten (10) years may be renewed for each ten (10) year period on the basis of three (3) years experience as a guidance counselor.

(2) Provisional certification issued initially for a period of ten (10) years may be renewed

for the next five (5) year period on three (3) years experience as a teacher or as a guidance counselor completed during the ten (10) years of initial issuance; for each five (5) year renewal period thereafter a minimum of eight (8) semester hours graduate credit shall be required, as selected from a program leading to the standard guidance certificate.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 13, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, October 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board for Elementary and Secondary Education at its September meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before October 20, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer
(1) Type and number of entities affected: Approximately 150 individuals currently enrolled in endorsement program for guidance counselor and 7 institutions of higher education.
(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: Individuals currently enrolled in these programs must complete requirements by September 1, 1993.
(2) Effects on the promulgating administrative body: Inform preparing institution regarding phase-out of current programs.
(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: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The endorsements for guidance counseling are being phased out and replaced by the updated provisional and standard guidance counseling certification program.
(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

PUBLIC PROTECTION & REGULATION CABINET
Department of Financial Institutions
Division of Securities
(Proposed Amendment)

808 KAR 10:040. Dishonest or unethical conduct defined.

RELATES TO: KRS Chapter 292
STATUTORY AUTHORITY: KRS 292.500(3)
NECESSITY AND FUNCTION: To clarify and define the phrase "dishonest or unethical conduct" as it appears in KRS 292.330(12)(a)7.

Section 1. For purposes of KRS 292.330(12)(a)7, the phrase dishonest or unethical practice shall include but not limited to:
(1) Unreasonable delay or failure to execute orders, liquidate customers' accounts or in making delivery of securities purchased or remittances (or credit) of securities sold.
(2) Selling securities at unfair prices in relation to market value, or with unreasonable or excessive markups or commission.
(3) Effecting transactions in the account of a customer, without his knowledge or consent or maintaining discretionary accounts without written authorization.
(4) Willful switches, churning, overtrading or reloading of securities in a customer's account for the purpose of accumulating or compounding commissions.
(5) Inducing a customer to invest beyond his known immediate financial resources or without regard to the nature and character of such account.
(6) Engaging or aiding in "boiler room" operations or high pressure tactics in connection with the promotion of speculative offerings or "hot issues" by means of an intensive telephone campaign, whereby the prospective purchaser is encouraged to make a hasty decision to buy irrespective of his investment needs and objectives.
(7) Participation in the solicitation or offer for sale of securities without the use and dissemination of a prospectus (where required), or making oral or written statements contrary to or inconsistent with the enclosures contained therein.
(8) Making false, misleading, deceptive, exaggerated or flamboyant representations or predictions in the solicitation or sale of a security as for example:
(a) That the security will be resold or repurchased;
(b) That it will be listed or traded on an exchange or established market;
(c) That it will result in an assured, immediate or extensive increase in value, future market price, or return on investments;
(d) With respect to the issuer's financial condition, anticipated earnings, potential growth or success;
(e) That there is a guarantee against risk loss.
(9) Failing to disclose a dual agency capacity or effecting transactions upon terms and conditions other than those stated per confirmations.
(10) Failing to make a bona fide public offering pursuant to an underwriting agreement or entering into an underwriting agreement which establishes unfair or unreasonable terms and

conditions or compensation.

(11) Establishing fictitious accounts in order to execute transactions which would otherwise be prohibited.

(12) Entering into agreements for selling concessions, discounts, commissions or allowances as consideration, for services in connection with the distribution or sale of a security in Kentucky with any nonlicensed broker-dealer or agent, unless such person is not required to be registered in order to engage in the securities business in this state.

(13) Operating a securities business while being unable to meet current liabilities or violating any rule or order relating to minimum capital, bond, recordkeeping and report requirements, or provisions concerning use, commingling or hypothecation of customer's funds or securities.

(14) Failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written demand or complaint.

(15) Attempting to enforce any condition, stipulation or provision against a customer in this state when the result would leave the customer without the choice of a forum for dispute resolution in this state or would limit the timeliness of an action to any period less than that contained in KRS 292.480(3).

RONDA S. PAUL, Director
EDWARD B. HATCHETT, JR., Commissioner
APPROVED BY AGENCY: September 12, 1989
FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10 a.m. at the Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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 received. 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: Thomas W. Stout, General Counsel, Department of Financial Institutions, Office of General Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas W. Stout

(1) Type and number of entities affected: Will affect registered broker/dealers and the investing public at large. Number indeterminate.

(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: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

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

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

(6) Any additional information or comments: This amendment will provide a greater degree of protection to the investing public by further defining dishonest and unethical conduct.

TIERING: Was tiering applied? No. This is a "definition" regulation. It has no administrative (i.e., costs, savings or paperwork) consequences.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 2:020. Reportable diseases.

RELATES TO: KRS 211.180, 214.010, 333.130
STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: KRS 211.180 mandates the Cabinet for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other such diseases and health hazards as may be controlled. This regulation is being promulgated in order to achieve uniform reporting of selected diseases.

Section 1. Reportable Diseases: Time of Reporting. Because of their public health significance, the following diseases and occurrences are hereby declared to be reportable within the time period specified below. All cases shall be reported.

(1) Diseases to be reported within twenty-four (24) hours. The following diseases and occurrences shall be reported individually within twenty-four (24) hours of arriving at a probable diagnosis: animal bites, anthrax, botulism (other than infant [food-borne]), campylobacteriosis, cholera, diphtheria, encephalitis, gonococcal infections (all suspected or confirmed antibiotic-resistant strains); hepatitis (viral), measles (rubeola), meningitis and other invasive disease caused by Haemophilus influenza type b, meningitis caused by Neisseria meningitidis, meningococcemia, pertussis (whooping cough), plague, poliomyelitis, rabies (human), rubella (including congenital rubella syndrome), salmonellosis, shigellosis, syphilis (primary, secondary, congenital and other infections suspected to be under one (1) year's duration

[and congenital,] trichinosis, tuberculosis, typhoid fever, yellow fever, yersiniosis, and a suspected epidemic of any disease, and positive tuberculin skin tests in children six (6) years of age and under.

(2) Diseases to be reported within seven (7) days. The following diseases shall be reported individually within seven (7) days of diagnosis: AIDS (acquired immune deficiency syndrome), amebiasis, [ascariasis,] botulism (in an infant), brucellosis, chancroid, Chlamydia infections, cryptococcosis, ehrlichiosis (human), giardiasis, gonococcal infections (other than antibiotic-resistant strains), granuloma inguinale, herpes simplex infections (genital), histoplasmosis, human immunodeficiency virus (HIV) infections, Kaposi's Sarcoma [hookworm], Kawasaki's disease, lead poisoning, Legionellosis [legionnaire's disease], leprosy, leptospirosis, Lyme disease, lymphogranuloma venereum, malaria, meningitis (caused by any organism other than N. meningitidis or H. influenza), mumps, Mycobacterium avium complex, Pneumocystis carinii pneumonia, psittacosis, Q fever, Reye's syndrome, Rocky Mountain spotted fever, syphilis (all stages other than those in subsection (1) of this section, tetanus, toxic shock syndrome, toxoplasmosis, tularemia, typhus.

(3) Diseases to be reported collectively, on a weekly basis[. The following diseases shall be reported collectively on a weekly basis]: chicken pox[, influenza].

(4) Diseases to be reported within three (3) months of diagnosis. The following diseases shall be reported individually within three (3) months of diagnosis: asbestosis, coal worker's pneumoconiosis, mesothelioma, silicosis.

Section 2. Reporting of Diseases. (1) Physicians. All physicians in active practice within the State of Kentucky shall report to the local health department of the county in which they practice, or to the Department for Health Services, any disease listed as reportable in Section 1 of this regulation as well as any other disease which may be designated as reportable by the Commissioner of the Department for Health Services, upon his determination that such reporting is important for the public health.

(2) Hospitals. The person in charge of any licensed hospital in Kentucky shall ensure that any hospitalized patient with any of the diseases listed in Section 1 of this regulation, as well as any other disease which may be designated as reportable by the Commissioner of the Department for Health Services, upon his determination that such reporting is important for the public health, shall be reported to the local health department of the county in which the hospital is located or to the Department for Health Services.

(3) Laboratories. The person in charge of any laboratory licensed in the state of Kentucky shall report to the local health department of the county in which the laboratory is located or to the Department for Health Services, any positive microbiologic or serologic test which indicates the presence of infection with an organism associated with any of the reportable diseases in Section 1 of this regulation, as well as any other disease which may be designated as reportable by the Commissioner of the Department for Health Services, upon his determination that such reporting is important for the public health. These reports shall be made within the time frame for the corresponding disease as in Section 1 of this regulation.

(4) Information required in report. Except for diseases listed in Section 1(3) of this regulation and any sexually transmitted disease, all reports shall contain the name and address of the patient as well as pertinent clinical, laboratory and epidemiological information. Reports of sexually transmitted diseases may be identified with a code (such as soundex plus birth date or initials plus birth date) which would always be the same for a given patient but which, in and of itself, would not identify the patient. [Cases of sexually transmitted disease may be reported with a reidentifiable code number assigned to the patient by the reporter and substituted in lieu of the patient's name and address.]

(5) Reporting of communicable diseases in animals. It shall be the duty of every person having knowledge of the existence of an animal of any species apparently afflicted with rabies, anthrax, eastern or western equine encephalitis, leptospirosis, brucellosis, tuberculosis, psittacosis, or other disease known to be communicable to man to report the pertinent information within twenty-four (24) hours to the local health department in the county in which the animal is located.

Section 3. Transmission of Reports to the Department for Health Services. Case reports described in Sections 1 and 2 of this regulation shall be transmitted from local health departments to the Department for Health Services within three (3) days of receipt, or sooner if an epidemic is suspected or assistance is needed. Where there is no local health department or when for any reason the local health department is unable to receive or forward any report of a reportable disease, the report shall be submitted directly to the Department for Health Services.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 12, 1989
FILED WITH LRC: September 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 23, 1989, at 9 a.m. in the Health Services Building, Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 18, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Reginald Finger
(1) Type and number of entities affected: Citizens at risk and health professionals, i.e., licensed MD's, hospitals, laboratories and local health department.

(a) Direct and indirect costs or savings to those affected: The treatment for any of the added diseases which may be contracted by any resident.

1. First year: Is costly and can be alleviated

by control methods initiated by health professionals when these diseases are reported.
2. Continuing costs or savings: Dollar savings of preventing and/or controlling any one of the newly reportable diseases would be substantial.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Increased number of reports submitted by health care providers although the infrequency of these diseases will cause little change in volume.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Cost of changing regulation.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Processing of additional reports received (see above).
(3) Assessment of anticipated effect on state and local revenues: Minimal - since current practices (state & local) of Communicable Disease control are already in place.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not in conflict.
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Was not applied because all health professionals are required to report and react in the same manner.

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. Only local health departments.
3. State the aspect or service of local government to which this administrative regulation relates. Local health departments to receive reports to intervene (when applicable), and to forward reports to the Department for Health Services.
4. How does this administrative regulation affect the local government or any service it provides? No new functions are required of local health departments.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 2:040. Surveillance and screening of carriers and selected groups.

RELATES TO: KRS 211.180, 214.010, 214.020
STATUTORY AUTHORITY: KRS 195.040, 211.090
NECESSITY AND FUNCTION: KRS 211.180 mandates the Cabinet for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases. This regulation insures that selected individuals and groups who serve as potential sources of certain communicable diseases are under proper medical surveillance in order to prevent outbreaks of such diseases among their contacts.

Section 1. Carriers. Any person who is a carrier of the infectious agents of Asiatic cholera, amoebic dysentery, bacillary dysentery, diphtheria, [tuberculosis,] typhoid, paratyphoid fever or any disease with a carrier state that poses a threat to the community [other communicable disease] shall be subject to the special supervision of the local health department or Cabinet for Human Resources, and every physician and local health department shall report such carriers immediately to the Cabinet for Human Resources.

Section 2. Selected Groups. The Cabinet for Human Resources or individual local health departments may require periodic medical examinations for selected occupational groups including barbers, beauticians, school teachers and employees, and others who come into intimate contact with the public and potentially serve as sources of infection.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 12, 1989
FILED WITH LRC: September 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 23, 1989, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 18, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Reginald Finger
(1) Type and number of entities affected: Persons who are carriers of infectious agents, their contacts and health providers and local health departments.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings: Clarifying which persons (carriers) need special supervision saves needless hardship all the entities and expenditures of dollars if supervision not needed.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Does not change existing requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Costs of changing regulations.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Remains the same.
(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative - no change. However clarification of "carriers" was deemed necessary.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not 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. No differences exist between this amendment and the existing regulation as it pertains to affected entities.

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. Only local health departments.
3. State the aspect or service of local government to which this administrative regulation relates. The surveillance and screening of carriers.
4. How does this administrative regulation affect the local government or any service it provides? This does not change local health department responsibilities or functions.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 2:060. Immunization schedules.

RELATES TO: KRS 158.035, 211.180, 214.032, 214.034, 214.036
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS 211.180 mandates the Cabinet for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases. KRS 214.034 requires the establishment of immunization schedules by the Cabinet for Human Resources. The regulation specifies the recommended schedule for mandatory immunization and is in keeping with the latest scientific information on the topic.

Section 1. Schedule for Required Immunizations. The recommended schedule for active immunization of normal infants and children against diphtheria, tetanus, pertussis, poliomyelitis, rubeola (measles) and rubella shall be that schedule currently recommended by the Immunization Program, Department for Health Services. This schedule shall be made known to all health care providers and school officials and shall be updated as necessary based on new scientific evidence. [is as follows:]
[(1) Initial series.]
[(a) Two (2) months of age: DTP, TOPV;]
[(b) Four (4) months of age: DTP, TOPV;]
[(c) Six (6) months of age: DTP;]
[(d) Fifteen (15) months of age: measles, rubella; and]
[(e) Eighteen (18) months of age: DTP, TOPV.]
[(2) Booster doses.]
[(a) Shortly before starting school: DTP, TOPV; and]
[(b) Fourteen (14) to sixteen (16) years of age: Td.]

Section 2. Immunizations Required for School Entry. The list below gives the number of doses required for school entry:
DTP: a minimum of four (4) doses; if the fourth dose is received before the fourth birthday, a fifth is required on or after the fourth birthday but before school entry.
TOPV: a minimum of three (3) doses; if the third is received before the fourth birthday, a fourth is required on or after the fourth birthday but before school entry.
Measles and Rubella: one (1) dose given on or after the first birthday is required. (NOTE: Measles and rubella vaccines are normally administered in combination with mumps virus vaccine as MMR.)
Td: students for whom ten (10) or more years have elapsed since the preschool DTP booster, one (1) dose of Td vaccine.

Section 3. [2.] Definitions. As used in this regulation:
(1) "DPT" means diphtheria and tetanus toxoids combined with pertussis vaccine;
(2) "TOPV" means trivalent oral poliovirus vaccine (Sabin);
(3) "Td" means combined tetanus and diphtheria toxoids (adult type). [;]
[(4) "Measles vaccine" and "rubella vaccine" may be given as measles-rubella combined vaccine.]

Section 4. [3.] Variance from Immunization Schedule. (1) The individual physician or local health department shall have the authority to alter the [recommended] immunization schedule when indicated for any unusual clinical circumstance in a given patient. The local health department, in consultation with the Immunization Program, Department for Health Services, shall have the authority to alter the immunization schedule when indicated because of any unusual epidemiological circumstance in the community. [individual vaccine or to suit any unusual local conditions.]
(2) A school age child who has begun but not completed the immunization schedule required by KRS 158.035 may be permitted to attend classes for a limited period of time specified by the individual physician or local health department as necessary for the completion of the immunization schedule.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 12, 1989
FILED WITH LRC: September 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 23, 1989, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 18, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Reginald Finger, M.D.
(1) Type and number of entities affected: Children 0-6 years of age (appro. 300,000) and local health departments. Physicians who see children and school personnel.
(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: Simplifies enforcement of immunization requirement for school entry.
(a) Direct and indirect costs or savings: No extra cost or measurable 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: A listing of exact ages for individual vaccine doses will change frequently and, therefore, is not appropriate to be spelled out in regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. No differences exist between this amendment and the current regulation as it pertains to affected entities.

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. Local health departments.
3. State the aspect or service of local government to which this administrative regulation relates. Immunization services.
4. How does this administrative regulation affect the local government or any service it provides? No change in its effect.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 2:080. Sexually transmitted diseases.

RELATES TO: KRS 211.180, 214.010, 214.160, 214.170, 214.185, 214.420
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS 211.180 mandates the Cabinet for Human Resources to implement (and conduct) a statewide program for the detection, prevention and control of communicable diseases. The purpose of this regulation is to establish uniform procedures for the diagnosis, treatment, prevention[, treatment,] and control of sexually transmitted diseases (STD). KRS 214.420 et seq. provide for the confidentiality of sexually transmitted diseases.

Section 1. Definitions. As used in this regulation:
(1) "Approved serology laboratory" means a laboratory that has been evaluated and certified by the Cabinet for Human Resources for performing serological tests for syphilis, in compliance with Kentucky's prenatal laws (KRS 214.160 et seq.).
(2) "Sexually transmitted diseases" (STD) means syphilis, gonorrhea, chancroid, granuloma inguinale, genital herpes, acquired immunodeficiency [immune deficiency] syndrome (AIDS), human immunodeficiency virus (HIV) infection, nongonococcal urethritis, mucopurulent cervicitis and chlamydia trachomatis infections including lymphogranuloma venereum, as well as any other disease identified by the Commissioner for Health Services as transmissible by sexual contact and of public health importance.
(3) An "approved serology test" means the VDRL slide test or RPR 18 mm circle card test or other test approved by the Cabinet for Human Resources and performed as described in the current edition of the "Manual of Tests for Syphilis" published by the United States Public Health Service.
(4) The phrase "reasonably suspected of being infected with a sexually transmitted disease" is considered to mean any person either, named in a controlled interview with a second person infected with a STD, as a sexual contact of that second person within the incubation period for the STD, or having a laboratory test result indicating a likelihood of infection with a STD.

Section 2. Medial Examination and Treatment of Sexually Transmitted Diseases. Any person infected with or reasonably suspected of being infected with a sexually transmitted disease shall undergo such medical examination as is necessary, including such laboratory testing procedures deemed advisable by the examining physician to reasonably determine the existence or nonexistence of the diagnosed/suspected sexually transmitted disease. If such person is determined to be infected with a sexually transmitted disease or there is the potential that the person is incubating the disease, he/she shall undergo such treatment or follow-up as may be determined adequate by the examining physician to render the person noninfectious or to prevent the onset of disease.

Section 3. [2.] Investigation and Enforcement. Only authorized personnel of the Cabinet for Human Resources and local health departments assigned to sexually transmitted disease control activities are empowered to carry out the prevention and control provisions set forth in this regulation. Their duties shall include, among other things, the investigation of persons known to be or reasonably suspected of being infected with a sexually transmitted disease. Such authorized personnel are empowered to direct that medical examinations, including

laboratory tests, be conducted of persons reasonably suspected of having a sexually transmitted disease.

[Section 3. Medical Examination and Treatment of Sexually Transmitted Diseases. Any person reasonably suspected of being infected with a sexually transmitted disease shall undergo such medical examination as is necessary, including such laboratory testing procedures as are deemed advisable by the examining physician, to definitely determine the existence or nonexistence of a sexually transmitted disease. If such person is found to be infected with a sexually transmitted disease, or the potentiality for incubation exists, he or she shall undergo such treatment as may be determined adequate by the examining physician to render the person noninfectious.]

[Section 4. Sexually Transmitted Diseases to be Reported. Upon diagnosis of a case of sexually transmitted disease, the physician and every other person acting under a physician's order, shall report such case in a prescribed manner to their local health department or to the Cabinet for Human Resources stating the infected person's name, address, age, sex, race, date of onset, and the name and stage of the disease; provided, however, that a reidentifiable code number assigned to the patient by the physician may be substituted in lieu of the patient's name and address and supplied upon request to personnel of the Cabinet for Human Resources or local health departments who are assigned to sexually transmitted disease control activities.]

[Section 5. Reports to be Confidential. (1) The Cabinet for Human Resources hereby declares that confidentiality is essential for the proper administration and operation of sexually transmitted disease control activities and therefore, all information and reports concerning persons infected with a sexually transmitted disease, or suspected of being infected with a or tested for or identified in an epidemiologic investigation for sexually transmitted disease are hereby declared to be confidential and only authorized personnel of local health departments, the physician retained by the patient, and the Cabinet for Human Resources assigned to sexually transmitted disease control activities shall have access to such records and information.]

[(2) Except for requests from licensed practicing physicians retained by the patient concerned and authorized health department personnel, information contained in sexually transmitted disease records shall be released only upon written consent of the patient.]

Section 4. [6.] Approved Serology Laboratories for Prenatal Tests. (1) The laboratory must have as its director a physician licensed to practice medicine in Kentucky or a person who meets the requirements set forth in 902 KAR 11:030, Section 1(4)(f) or (6).

(2) All approved laboratories must maintain satisfactory performance in a serological test for syphilis proficiency test program approved by the cabinet.

(a) Proficiency test results shall be reported on forms provided by the cabinet within seven (7) days after specimens are received. The following letter symbols are to be used:

N - Nonreactive
W - Weakly Reactive
R - Reactive

(b) Criteria for satisfactory test performance are:

1. Agreement with results of reference laboratories on individual specimens - ninety (90) percent.

2. Reproducibility on duplicate samples - ninety (90) percent.

(3) Certificates of approval shall be issued annually by the Cabinet for Human Resources to all laboratories evaluated and certified by the Cabinet for Human Resources.

(4) All approved serology laboratories shall fully comply with all the provisions of Kentucky's prenatal laws and with the rules and regulations of the Cabinet for Human Resources.

[Section 7. Laboratory Tests for Sexually Transmitted Diseases to be Reported. Whenever any laboratory in Kentucky performs a test for any sexually transmitted disease, the result if reactive or positive shall be reported within one (1) week thereafter to the Cabinet for Human Resources on forms provided by the cabinet.]

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 12, 1989
FILED WITH LRC: September 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 23, 1989, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 18, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Reginald Finger, M.D.

(1) Type and number of entities affected: Persons with or suspected of having sexually transmitted diseases (approximately 20,000 per year) and personnel of approved laboratories.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

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

(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: This regulatory change is editorial in nature. No change in policy or procedures.

(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. No differences exist between this amendment and the current regulation as it pertains to affected entities.

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. Local health departments.
3. State the aspect or service of local government to which this administrative regulation relates. Health department STD services.
4. How does this administrative regulation affect the local government or any service it provides? No change.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 2:090. Tuberculosis testing.

RELATES TO: KRS [158.036,] 158.037, 211.180, 214.034, 215.520
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS 211.180 mandates the Cabinet for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases. KRS 214.034 requires the establishment of tuberculosis testing schedules for children by the Cabinet for Human Resources. KRS 158.037 requires the establishment of reporting regulations for tuberculin skin test results in children attending all public or private elementary or secondary schools by the Cabinet for Human Resources. [KRS 158.036 establishes the schedule for mandatory tuberculosis testing of children as an initial two (2) year period with subsequent testing every five (5) years at the discretion of the Secretary for Human Resources.] The regulation mandates tuberculin testing for all first time school enrollees in private and public schools in Kentucky and describes the methods for reporting tuberculin skin test results on children to local health departments.

Section 1. Definitions. (1) "Child" means an individual under the age of eighteen (18) years.
(2) "Tuberculin skin test" means the intracutaneous injection of five (5) tuberculin units of purified protein derivative by the Mantoux technique or multiple puncture, but preferably the former.
(3) "First-time enrollee" means a child entering private or public school (kindergarten through 12th grades) in the Commonwealth, the child never having attended school in the Commonwealth previously.

Section 2. Each first-time enrollee in public or private school in the Commonwealth shall be tested for tuberculosis by tuberculin skin test within one (1) year prior to entering the public or private school. A child who has not been tested prior to entering the public or private schools may be permitted to attend class for a period of time not to exceed thirty (30) days, as approved in writing by the health officer of the local health department having jurisdiction. Further attendance shall be [is] conditioned upon presentation of proof of having been tested for tuberculosis in accordance with Section 3 of this regulation.

Section 3. (1) Each first-time enrollee in a public or private school shall present a valid certificate approved by the Cabinet for Human Resources and signed by the attending physician or by the health officer of the local health department having jurisdiction, containing the date of the most recent tuberculin skin test, the type of skin test given (Mantoux, multiple puncture or other), and the millimeters of induration at forty-eight (48) to seventy-two (72) hours posttesting. The test shall have been read by a health professional. The certificate shall become a permanent part of the child's school health record.
(2) When tuberculin skin testing is medically contraindicated according to the written statement of an attending physician or of the health officer of the local health department having jurisdiction, the child shall receive a chest x-ray. The only exception to this requirement is a child who can present documentation of a completed course of isoniazid prophylaxis or multiple drug treatment for previously diagnosed tuberculosis infection or disease.

Section 4. Each public or private school shall, within sixty (60) days of the beginning of each school year, forward to the local health department having jurisdiction in the area a report containing:
(1) A list showing the name, grade, type of tuberculin skin test performed and the millimeters of induration for all first-time enrollees who had any induration at forty-eight (48) to seventy-two (72) hours indicated on their tuberculin skin testing certificate and all first-time enrollees who were excepted in accordance with Section 3(2) of this regulation; and
(2) The number of first-time enrollees by school grade; and of those, the number tested.

Section 5. When the prevalence of significant tuberculin reactors among first-time enrollees at any school exceeds or equals five-tenths (0.5) of one (1) percent, additional testing may be required by the health officer of the local health department having jurisdiction or the Cabinet for Human Resources. Results of the testing shall be provided the local health department having jurisdiction. Additional control measures may then be required at the sound discretion of the health officer of the local health department having jurisdiction or the Cabinet for Human Resources in order to protect the public health.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 12, 1989
FILED WITH LRC: September 14, 1989 at 3 p.m.
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Reginald Finger, M.D.
(1) Type and number of entities affected: School children in Kentucky.
(a) Direct and indirect costs or savings to those affected: An extra visit to the local health department or physicians office to have the skin test read. This should be a no cost visit.
1. First year:
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(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:
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative other than an amendment can remove reference to the repealed statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The necessity of interpretation of the skin test result by a health professional can save misinterpretation and assure that children have valid certificates in the permanent record.
TIERING: Was tiering applied? No. No differences exist between this amendment and the existing regulation as it pertains to affected entities.

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. Local health departments.
3. State the aspect or service of local government to which this administrative regulation relates. Reading TB skin tests.
4. How does this administrative regulation affect the local government or any service it provides? Local health departments currently provide this service.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation
(Proposed Amendment)

908 KAR 3:060. "Means Test" pursuant to the "Patient Liability Act of 1978."

RELATES TO: KRS 210.700 to 210.760
STATUTORY AUTHORITY: KRS 13A.210, 210.710, 210.750
NECESSITY AND FUNCTION: KRS 210.710 and 210.720 authorizes the Secretary for Human Resources to adopt a "Means Test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the cabinet for the mentally ill or mentally retarded. The function of this regulation is to adopt a "Means Test" in compliance with KRS 210.710 to KRS 210.760.

Section 1. Means Test. The Cabinet for Human Resources hereby adopts the following uniform method for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at facilities operated or utilized by the Cabinet for Human Resources for the mentally ill or mentally retarded.
(1) Ascertain the entire financial resources available to the patient or the person responsible for the patient as follows:
(a) Insurance and third party payors, including, but not limited to Medicare, Medicaid and all other governmental and private programs or payors;
(b) Income received, or expected to be received during the period of hospitalization, including:
1. Self-employed gross revenues, less operating expenses;
2. Salaried and waged hourly employees gross income;
3. Interest and dividend income;
4. Rental income;
5. Royalties;
6. Alimony; and
7. Any other similar sources of income.
(c) Assets including, but not limited to:
1. Cash, checking accounts, savings accounts, certificates of deposit;
2. Stocks and bonds at market value; and
3. All other property except as otherwise exempted by law.
(d) Benefit and support payments received or expected to be received during the period of hospitalization, including, but not limited to:
1. Social Security;
2. Veterans pension;
3. Railroad retirement;
4. United Mine Workers pension;
5. Supplemental security income;
6. Retirement; and
7. Any other similar sources of benefits or support payments.
(2) After ascertaining the entire financial resources of the patient, apply Table I, II, or

III, as appropriate. The ability to pay, of the patient or person responsible for the patient, shall not exceed the total daily charges, less available Medicare, Medicaid, CHAMPUS, insurance and other benefits. Any overpayments resulting from application of the ability to pay "Means Test" by the patient or person responsible for the patient shall be refunded.

TABLE I ABILITY TO PAY INCOME TABLE

Size of Family	*Gross Income Protected For Basic Maintenance
1	$ 7,212 [7,183]
2	9,660 [11,656]
3	12,108 [15,861]
4	14,568 [19,155]
5	17,016 [21,982]
6	19,464 [24,844]

*Title XIX federal regulations at 125% of poverty. [Bureau of Labor Statistics Standards, South nonmetropolitan area (February, 1984) used as basis.]

For each additional family member, add $2,460 [3,100].

Subtract from excess:

(a) Applicable taxes, social security, retirement.

(b) Any unpaid medical/dental bills.

(c) Any extraordinary or involuntary expenses.

TABLE II ABILITY TO PAY ASSETS TABLE

Size of Family	*Assets Protected
1	$ 2,000 [1,600]
2	4,000 [3,200]
3	4,050 [3,250]
4	4,100 [3,300]

*Per Title XIX Federal Guidelines.

For each additional family member add fifty (50) dollars.

Prorate excess by number of family members.

Excess asset payments may be spread over one (1) to twelve (12) months if patient or person responsible for the patient's financial situation warrants special consideration or if the patient is discharged before paying all excess assets.

TABLE III ABILITY TO PAY BENEFIT AND SUPPORT PAYMENT TABLE

*Normal Disregards:

Personal Spending	$40 [25] per month
Ineligible Spouse	$208 [192] per month
Monthly Medicare Part B Insurance Premium	
Prepaid Burial	$1,500 per family member

*Title XIX Federal Guidelines.

If benefit and support payments are the sole sources of income or the principal sources of income to sustain the livelihood of the patient's immediate family (living in household) then an amount in addition to the normal disregards shall be excluded so as to meet the basic needs of food, clothing, and shelter including continuing ownership of a homestead if sufficient funds are available.

The patient or person responsible for the patient who receives benefits (Social Security, etc.) or support payments (child support, etc.) intended for the board, maintenance, and treatment of a patient shall assign or pay such amount, less the above mentioned disregards and exclusions to the respective health services facility.

(3) In the event the ability to pay payment as determined from Table III creates an undue hardship, the patient or person responsible for the patient may request an administrative review by the departmental collections officer.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 14, 1989
FILED WITH LRC: August 28, 1989 at 2 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 23, 1989, at 9 a.m. in the Health Services Building, Health Services Auditorium, 1st Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 18, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patricia J. Russell

(1) Type and number of entities affected: 7,000 utilizing Department for Mental Health/Mental Retardation institutions.

(a) Direct and indirect costs or savings to those affected: Savings and/or cost is determined by uniformly applying medical indigency guidelines. Each individuals will differ.

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 paperwork is required.

(2) Effects on the promulgating administrative body: Reassessment for all individuals utilizing mental health/mental retardation facilities.

(a) Direct and indirect costs or savings: There will be no 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: A minimal increase in revenues as a result of the lowering of income protected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative method.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

CABINET FOR HUMAN RESOURCES
Department for Mental Health and
Mental Retardation Services
(Proposed Amendment)

908 KAR 3:150. Policies and procedures of Western State Hospital VOLTA program.

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 202A.196, 202B.060, 210.010, 210.040, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010, relating to the hospitalization of mentally ill and mentally retarded persons, directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these policies.

Section 1. Polices and procedures of Western State Hospital VOLTA program as set forth in the September [April] 15, 1989, edition of the Western State Hospital VOLTA program policy and procedures manual consisting of one (1) volume relating to the operation of Western State Hospital VOLTA program are incorporated by reference.

Section 2. The policies and procedures of Western State Hospital VOLTA program are contained in one (1) volume with of 100 pages. They are available for inspection and copy at the office of the Commissioner of the Department for Mental Health and Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and in the office of the Director of the VOLTA Program, Western State Hospital, P.O. Box 2200, Hopkinsville, Kentucky 42240.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 7, 1989
FILED WITH LRC: September 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 23, 1989, at 9 a.m. in the Health Services Auditorium, 1st Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 18, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd
(1) Type and number of entities affected: The 470 persons admitted each year from 42 counties along with their families.
(a) Direct and indirect costs or savings to those affected: These policies and procedures deal with the residential care and treatment of residents and not directly with cost and savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: There is no financial effect on the department by incorporating these policies.
(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: These policies do not affect revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute in 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: There is no additional information.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

PROPOSED REGULATIONS RECEIVED THROUGH SEPTEMBER 15, 1989

DEPARTMENT OF PERSONNEL

101 KAR 2:006 Repeal of previous regulations.

RELATES TO: KRS 18A.110
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.110 specifies the subjects which these administrative regulations are to address. This regulation is to comply with these statutory provisions by repealing regulations adopted prior to the current statutory authorization.

Section 1. The following administrative regulations are hereby repealed: 101 KAR 2:010, Definitions; 101 KAR 2:080, Layoffs; 101 KAR 2:110, Employer evaluation plan; and, 101 KAR 2:130, Political activity.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: All appointing authorities and employees in the Executive Department subject to KRS 18A.
(a) Direct and indirect costs or savings to those affected: None. This regulation repeals regulations superseded by statute by removing duplicative or unauthorized language.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
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: Repeal of redundant language is required by KRS 13A.120.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

DEPARTMENT OF PERSONNEL

101 KAR 3:006. Repeal of previous regulation.

RELATES TO: KRS 18A.155
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.155
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to promulgate administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KAR 18A.155 specifies the subjects which these administrative regulations are to address. This regulation is to comply with these statutory provisions by repealing regulations adopted prior to the current statutory authorization.

Section 1. The following administrative regulation is hereby repealed: 101 KAR 3:030, Appeals for employees in the unclassified service.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989 at 10:30 a.m. at Room 381 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: All

appointing authorities and nonmerit employees in the Executive Department subject to KRS 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Board of Pharmacy

201 KAR 2:121. Repeal of 201 KAR 2:120, 2:125, 2:135, 2:140, 2:145, 2:150, and 2:155.

RELATES TO: KRS Chapter 217
STATUTORY AUTHORITY: KRS 217.814(7), (8), 217.819(1)
NECESSITY AND FUNCTION: There are now approved drug products that FDA considers to be therapeutically equivalent to other pharmaceutically equivalent products with no potential bioequivalence issues.

Section 1. 201 KAR 2:120, 2:125, 2:135, 2:140, 2:145, 2:150, and 2:155 are hereby repealed.

RICHARD E. MURRAY, President
APPROVED BY AGENCY: September 15, 1989
FILED WITH LRC: September 15, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing has been scheduled for 10 a.m. on October 23, 1989, at the office of the Board of Pharmacy, 1228 US 127 South, Frankfort. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 18, 1989, of their desire to appear and testify at the hearing: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 US 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross
(1) Type and number of entities affected: Potentially all legend drug product prescription users in the Commonwealth.
(a) Direct and indirect costs or savings to those affected: Savings to consumers due to lowest priced drug product dispensed which is therapeutically equivalent.
1. First year: $26,000.
2. Continuing costs or savings: $100,000.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Competition would require more pharmacies to stock lower priced drug products for consumer to make or have available a choice.
(b) Reporting and paperwork requirements: Identification on prescription the brand name or name of manufacturer or supplier of the drug.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: As identified in 1(b) which is maintained in pharmacy record only.
(3) Assessment of anticipated effect on state and local revenues: Saving on prescription price to consumer which should not effect state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative method does not allow substitution of lower priced drug.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no 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: When original regulation proposed the necessary information to dispense a lower priced drug product was not available from FDA. This information is now provided.
TIERING: Was tiering applied? No. Substitution would be required of all pharmacies who have a lower priced generic drug in stock which is therapeutically equivalent to the one prescribed. Those pharmacies who do not have a lower priced generic in stock would not be effected by this change in repealing this regulation.

REVENUE CABINET
Department of Administrative Services

103 KAR 43:310. Subjobber issuance of refund invoices.

RELATES TO: KRS 138.210, 138.349, 138.351
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: Only licensed gasoline and special fuels dealers and their authorized subjobber agents may execute motor fuels tax refund invoices. This regulation establishes criteria necessary for determining who qualifies as authorized subjobber agents for such refund invoice issuance purposes.

Section 1. Definitions. "Authorized subjobber agent" means any person who, pursuant to a written contract, purchases gasoline or special fuels exclusively from a single dealer licensed under KRS 138.210 to 138.500 and, subject to such licensed dealer's control and consent,

sells the gasoline or special fuels so purchased to others by the authority and on the account of such licensed dealer to whom an accounting of such sales is regularly made.

Section 2. No person other than a gasoline or special fuels dealer licensed pursuant to KRS 138.210 to 138.500 shall execute a motor fuels tax refund invoice unless such person is an authorized subjobber agent of a licensed dealer.

Section 3. An authorized subjobber agent shall be subject to the same rules and conditions as a licensed dealer with respect to the issuance of motor fuels tax refund invoices to consumers.

C. EMMETT CALVERT, Secretary
ALEX W. ROSE, Commissioner
APPROVED BY AGENCY: September 13, 1989
FILED WITH LRC: September 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1989, at 10 a.m. in Room 403, Capitol Annex Building, Frankfort, Kentucky 40620. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1989, 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. The 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: Scott Akers, Tax Policy Section, Revenue Cabinet, Room 423, Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person:
(1) Type and number of entities affected: Any person desiring to distribute tax refundable motor fuels but who does not become licensed as a gasoline or special fuels dealer would be affected. The proposed regulation simply defines what a person must do to qualify as an authorized subjobber agent as referenced in KRS 138.349.
(a) Direct and indirect costs or savings to those affected: This regulation simply clarifies the relationship which must exist before a person can be considered to be an authorized subjobber agent of a licensed gasoline or special fuels dealer. Any person qualifying as an authorized subjobber agent would then be permitted to issue motor fuels tax refund invoices to customers under certain conditions. Some small, but immeasurable, cost would be incurred by the authorized subjobber agent in the issuance of such invoices, including minor training of employees in how to complete the invoice form.
1. First year: This regulation simply clarifies the relationship which must exist before a person can be considered to be an authorized subjobber agent of a licensed gasoline or special fuels dealer. Any person qualifying as an authorized subjobber agent would then be permitted to issue motor fuels tax refund invoices to customers under certain conditions. Some small, but immeasurable, cost would be incurred by the authorized subjobber agent in the issuance of such invoices, including minor training of employees in how to complete the invoice form.
2. Continuing costs or savings: This regulation simply clarifies the relationship which must exist before a person can be considered to be an authorized subjobber agent of a licensed gasoline or special fuels dealer. Any person qualifying as an authorized subjobber agent would then be permitted to issue motor fuels tax refund invoices to customers under certain conditions. Some small, but immeasurable, cost would be incurred by the authorized subjobber agent in the issuance of such invoices, including minor training of employees in how to complete the invoice form.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Since this regulation would impact only those persons who are already fuels subjobbers and those who may desire to enter such a relationship with a licensed dealer, there should be no effect on competition.
(b) Reporting and paperwork requirements: Some small, but immeasurable, cost would be incurred by the authorized subjobber agent in the issuance of refund invoices and retaining a file copy thereof.
(2) Effects on the promulgating administrative body: This regulation simply clarifies the relationship which must exist before a person can be considered to be an authorized subjobber agent of a licensed gasoline or special fuels dealer as referenced in KRS 138.349.
(a) Direct and indirect costs or savings: None, except for the cost of advising licensed dealers about the provisions of the proposed regulation. Such costs are expected to total less than $1,000.
1. First year: None, except for the cost of advising licensed dealers about the provisions of the proposed regulation. Such costs are expected to total less than $1,000.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None. This regulation simply clarifies the relationship which must exist before a person can be considered to be an authorized subjobber agent of a licensed gasoline or special fuels dealer as referenced in KRS 138.349.
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None. This regulation simply clarifies the relationship which must exist before a person can be considered to be an authorized subjobber agent of a licensed gasoline or special fuels dealer as referenced in KRS 138.349.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to this proposed regulation was to not propose a regulation to clarify requirements for authorized subjobber agents. This alternative was rejected as prospective subjobber agents would not otherwise be made aware of the requirements for issuing gasoline and special fuels refund invoices.
(5) Identify any statute, administrative

regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: This regulation simply clarifies the relationship which must exist before a person can be considered to be an authorized subjobber agent of a licensed gasoline or special fuels dealer as referenced in KRS 138.349.

TIERING: Was tiering applied? No. This regulation applies equally to all persons desiring to issue motor fuels tax refund invoices as an authorized subjobber agent of a licensed gasoline or special fuels dealer. There is no statutory basis for any tiering.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 7:090. Homeless children education program.

RELATES TO: KRS 156.031, 156.035, 42 U.S.C. Section 11432

STATUTORY AUTHORITY: KRS 156.035

NECESSITY AND FUNCTION: In accordance with the Stewart B. McKinney Homeless Assistance Act of 1987, the Kentucky Department of Education, when applying to the U.S. Department of Education for participation in programs for homeless children under the Act, shall submit an approvable plan and satisfactory assurances that all requirements of the law set forth in 42 U.S.C. Section 11432 shall be met. This regulation implements the State Board for Elementary and Secondary Education's KRS 156.031 and 156.035 duties to develop education policy, to implement acts of Congress appropriating and apportioning funds to the state and to provide for the proper implementation of federal law in accordance with the state's current plan. This regulation sets forth criteria regarding residency policies, the provision of a free, appropriate public education to homeless children, provides informal procedures for resolution of disputes regarding educational placement of homeless children, and provides for an annual count of homeless children.

Section 1. Definitions. (1) "Homeless child", "homeless children", "homeless youth", and "homeless student" means a child or children who are between the ages of five (5) and twenty-one (21) inclusive and who are:

(a) Living with their families in hotels, motels, public or private shelters, parks or campgrounds, or other temporary living arrangements due to the lack of a fixed, regular and adequate residence;

(b) Residing in special care homes such as runaway shelters or spouse abuse centers due to the lack of a fixed, regular and adequate residence;

(c) Placed by parents under the care of relatives or nonrelatives due to the homeless situation of the family or due to their impoverished condition which causes the family to be living separately from one another;

(d) Sleeping in a public or private place not ordinarily used as a regular sleeping accommodation for human beings; or

(e) Awaiting assistance from social service agencies in a hospital or a temporary placement facility due to being abandoned or forced out of the home by parents or other caretakers.

(2) Such homeless children shall not include any individual imprisoned or otherwise detained by act of Congress or a state law. Nor shall a child be classified as "homeless" to circumvent state law and regulations which:

(a) Prohibit the attempted enrollment of nonresident students for the express purposes of obtaining school accommodations and services without the payment of tuition to the nonresident school district or for the purpose of obtaining specific programs not available in the school of residence; or

(b) Regulate interschool athletic recruiting by the Kentucky High School Athletic Association.

(3) "Free, appropriate public education" means the educational programs and services that are provided the children of a resident of a state, and that are consistent with state school attendance laws. It includes educational services for which the child meets the eligibility criteria, such as compensatory education programs for the disadvantaged, and educational programs for the handicapped and for students with limited English proficiency; programs in vocational education, programs for the gifted and talented; and school meals programs.

Section 2. Criteria for Program Implementation. Homeless children or homeless youth who reside within the boundaries of a local school district shall be provided a free, appropriate public education. Programs for homeless children and youth shall be provided in a timely fashion and shall be ensured by the following actions:

(1) Each local district shall designate a person in the district to be a homeless child education coordinator and shall submit the name of the person to the Kentucky Department of Education. The coordinator's responsibilities shall be to:

(a) Obtain all necessary records of each homeless student identified as living within the boundaries of the school district and place the student in appropriate programs within two (2) school days of the student's appearance in the district. In cases where records are not readily available, the coordinator shall contact the school district(s) of last attendance for verbal confirmation of essential information. The coordinator shall assist the homeless student to obtain essential records which are not in existence in order that enrollment shall not be delayed or denied;

(b) Receive and resolve any requests for resolution of disputes related to the educational placement of homeless students within the district. The coordinator shall provide the necessary information to the Department of Education for final resolution whenever such a request is received and is not resolved;

(c) Assist the homeless student to obtain the appropriate program and services, including transportation; and

(d) Develop procedures to ensure that homeless student records are readily available upon request by a new receiving school district.

Section 3. Residency. The school district of residence is the district in which the homeless student's physically resides, parent or legal custodian unless by reason of marriage, emancipation, or basic physical necessity the child resides elsewhere. The school district of residence and shall ensure that:

(1) The homeless student is enrolled in the district in which he or she is physically located or that the homeless student's education is continued in the school district of origin for the remainder of the school year, whichever is in the best interest of the homeless student.

(2) A homeless student shall not be denied enrollment in the school district of residence due to the absence of a parent or a court-appointed guardian or custodian. Such a homeless student shall be enrolled and provided educational services until such time that the school district can substantiate that the enrollment is contrary to Section 1(2) of this regulation.

(3) In the absence of a parent, and a court-appointed custodian or guardian, any medical, dental and other health services may be rendered to a homeless student who is a minor of any age when, in the judgment of the school principal or other professional that the risk to the minor's health is of such a nature that treatment should be given without delay and the requirements of consent would result in delay or denial of treatment as stated in KRS 214.185(3)(4).

(4) No policy of the school district shall delay or deny the timely provision of educational placement and appropriate services to the homeless student, including policies related to guardianship issues.

Section 4. Resolution of Disputes. Disputes arising between or among the school district of residency; another school district; and the parent, homeless youth, or person in parental relationship to the homeless student regarding the school district in which the child shall attend school or the educational placement of the homeless student shall be resolved through the following procedures:

(1) The school district's homeless child education coordinator shall inform the representative of the homeless student of the right to an informal hearing with the school district(s) when a dispute arises about the placement of the homeless student. The coordinator shall assist the representative to complete a written request for the hearing which shall be based on a placement that was initiated, or declined to be initiated, by the school district not more than two (2) school weeks prior to the request.

(2) The informal hearing shall be scheduled within two (2) days of the written request and shall be convenient to the needs of the representative of the homeless student.

(3) During the hearing, the school district(s) shall discuss any considerations that led to the placement decision which may include the ability of the school district to provide continuity in educational programs, the need of the homeless student for special instructional programs, the amount of time and arrangements required to transport the student to the original school district, the age of the homeless student and the school placement of siblings, and the time remaining until the end of the semester or the end of the school year.

(4) In cases where an agreement cannot be reached among all involved parties, either party may request the assistance of the state homeless children education coordinator. Upon written request, the coordinator shall meet with the involved parties to discuss available alternatives and seek to resolve the dispute.

(5) In cases of such a request for the assistance of the state coordinator, the school district of residence shall inform the Kentucky Department of Education and shall provide sufficient information as required.

(6) The placement and services for the homeless student shall be continued pending the resolution of the dispute by the Department of Education.

Section 5. Annual Count. The Department of Education shall annually conduct a count of all homeless children and youth in the state as follows:

(1) Survey instruments shall be distributed to local school districts, related social agencies, and appropriate service providers according to the required time lines set by the U.S. Department of Education.

(2) Local school districts, social agencies, and service providers shall return the completed forms to the Department of Education according to the time lines provided.

(3) The Department of Education shall develop procedures as required to ensure that the homeless child count is accurate and verifiable.

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: September 13, 1989

FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, October 25, 1989, 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 provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before October 20, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joanne Brooks/Carole Kruse

(1) Type and number of entities affected: All LEA's and homeless families with school-aged children.

(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: Each school district must participate in an annual count of homeless children and youth.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing

costs: None
(b) Reporting and paperwork requirements: Report of annual count to U.S.D.E. annually; a state plan.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal law requires policies and impartial hearing procedures.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 158.035 Certificate of Immunization OAG 79-420 Possible Grace Period for Immunization.
(a) Necessity of proposed regulation if in conflict: Many homeless families cannot retain essential records and need assistance to gain them.
(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. Federal law does not allow.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title VII, Subtitle B of the Stewart B. McKinney Homeless Assistance Act, PL 100-77, Section 722(e).
2. State compliance standards. Provide state policies in regard to federal mandates.
3. Minimum or uniform standards contained in the federal mandate. Submit state plan; comply with regulations under PL 100-88, Section 722(c).
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. These regulations require that a homeless children education coordinator be assigned at the local level to assist homeless students to be enrolled and to ensure a FAPE is provided.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate provides requirements that could not be met without a staff member at the local level to oversee their implementation.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 20:530. Guidance counselor, provisional and standard certificates.

RELATES TO: KRS 161.020, 161.025, 161.030
STATUTORY AUTHORITY: KRS 161.020, 161.025, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, 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 for Elementary and Secondary Education. This regulation established an appropriate certificate for guidance counseling and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) The provisional certificate for guidance counselor shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary 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 77.0.
(2) Prerequisites for guidance counseling certification shall include the following:
(a) A Kentucky teaching certificate as follows:
1. For guidance counseling grades K-8, a certificate valid for classroom teaching at the elementary level, grades 1-8, K-4, or 5-8.
2. For guidance counseling grades 5-12, a certificate valid for classroom teaching in the middle grades 5-8 or at the secondary level, grades 7-12 or 9-12.
3. Teachers who hold a Kentucky teaching certificate valid for teaching art, music, physical education, special education, or school media librarian in grades K-12 may complete the curriculum for K-8 guidance counseling or 5-12 guidance counseling, provided the applicant has teaching experience corresponding to the grade range of the guidance counseling curriculum to be completed.
(b) One (1) year of successful full-time classroom teaching experience.
(c) Persons who have completed an approved master's degree preparation-certification program for guidance counseling in another state which does not require classroom teaching certification and teaching experience may satisfy the prerequisites with three (3) years of experience as a guidance counselor.
(3) The Provisional Certificate for Guidance Counselor shall be issued for a duration period of five (5) years and may be renewed upon completion of a minimum of nine (9) semester hours of graduate credit every five (5) years selected from the program leading to the standard certificate for guidance counselor.
(4) Whenever there is a lapse in a Provisional Certificate for Guidance counselor for lack of meeting the renewal requirments, certification may be reissued at a later date by first completing a minimum of nine (9) semester hours of graduate credit applicable to the Standard Certificate for Guidance Counselor.

Section 2. Applicants who have completed the program of preparation for guidance counseling in grades K-8 may qualify for guidance counseling in grades 5-12 by completing a minimum of six (6) semester hours of coursework which includes the following:
(1) Human behavior, development, and learning for secondary pupils.
(2) Instructional design and curriculum for secondary school pupils.
(3) Career development and vocational planning for secondary school pupils.
(4) A practicum experience at the high school level prior to employment at that level.

Section 3. Applicants who have completed the

program of preparation for guidance counseling in grades 7-12 or 5-12 may qualify for guidance counseling in grades K-8 by completing a minimum of six (6) semester hours coursework which includes the following:

(1) Human behavior, development, and learning for elementary school pupils.

(2) Instructional design and curriculum for elementary school pupils.

(3) Career development and vocational planning for elementary school pupils.

(4) A practicum experience in the elementary grades prior to employment at that level.

Section 4. (1) The standard certificate for guidance counselor shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary 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 77.0.

(2) A prerequisite for the standard certificate for guidance counselor shall be one (1) year of experience as a full-time guidance counselor.

(3) The standard certificate for guidance counselor shall be issued for a duration period of five (5) years and shall be renewed subsequently for five (5) year periods upon completion by September 1 of the year of expiration of a minimum of sixty (60) clock hours of appropriate counselor role specific training. It shall be the responsibility of the guidance counselor to provide documentation of this training to the local school superintendent who recommends certificate renewal. Six (6) semester hours of additional graduate credit in counseling related coursework may be substituted in lieu of the sixty (60) clock hours.

(4) Whenever there is a lapse in the standard certificate for guidance counselor for lack of meeting renewal requirements, the certificate may be reissued at a later date under current regulations by first completing twelve (12) clock hours of counselor role specific training for each year since the expiration of the certificate up to a maximum of seventy-five (75) clock hours or six (6) semester hours of additional graduate credit appropriate to position of guidance counselor.

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: September 13, 1989

FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, October 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board for Elementary and Secondary Education at its September meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before October 20, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: Approximately 150 new guidance counselors certified each year and 7 institutions of higher education.

(a) Direct and indirect costs or savings to those affected: Tuition costs for required coursework to complete preparation program.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Institutions must file revised curricula for new programs. Candidates for certification must complete requirements and file application.

(2) Effects on the promulgating administrative body: Review and approve revised curricula. Review and process application.

(a) Direct and indirect costs or savings: No additional costs.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Review revised curricula and recommend approval to State Board of Education. Process applications and issue certificates where appropriate.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: School guidance counselor require specific training which provides special knowledge and skills required to perform responsibilities as guidance counselors for public school students.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 20:540. Professional certificate for administrator of pupil personnel services.

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 for Elementary and Secondary 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 for administrator of pupil personnel services and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) The Professional Certificate for Administrator of Pupil Personnel Services shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary 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 113.0.

(2) As prerequisites for the program of preparation for the initial professional certificate for Administrator of Pupil Personnel Services, the candidate shall:

(a) Have been admitted to the preparation program on the basis of criteria developed by the teacher education institution pursuant to TEC 113.0;

(b) Have completed three (3) years of full-time teaching experience;

(c) Have completed the master's degree; and

(d) Have been issued any one of the following standard teaching certificates: standard elementary certificate grades 1-8; standard certificate for teaching in the early elementary grades K-4; standard certificate for teaching in the middle grades 5-8; standard high school certificate grades 7-12; standard certificate for teaching in the secondary grades 9-12; standard certificate for teaching music grades K-12; or standard certificate for teachers of exceptional children (except those having speech and communications disorders as the specialty area).

(3) The professional certificate for Administrator of Pupil Personnel Services shall be issued for a duration period of five (5) years. Each five (5) year renewal shall require the completion of two (2) years of experience as an administrator of pupil personnel services, three (3) semester hours of additional graduate credit related to the position of administrator of pupil personnel services, or forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Leadership Training Program.

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: September 13, 1989

FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, October 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board for Elementary and Secondary Education at its September meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before October 20, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: Approximately 12 individuals per year seek certification as administrator pupil personnel services and five institutions of higher education offering the certification program.

(a) Direct and indirect costs or savings to those affected: College tuition costs to individuals completing certification programs. Costs involved in revising certification programs at institutions of higher education.

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: Preparing institutions must have revised program submitted for approval. Individuals completing certification programs must file applications for certification.

(2) Effects on the promulgating administrative body: Review and approve revised curricula. Review and process applications for certification.

(a) Direct and indirect costs or savings: No additional costs. No additional costs.

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: School pupil personnel administrators have special duties that require prescribed training in order that these duties be performed effectively. Appropriate certification for such positions is required under KRS 159.080.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 20:560. Master of arts in teaching.

RELATES TO: KRS 161.020, 161.025, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.025, 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 for Elementary and Secondary Education. This

regulation establishes guidelines under which institutions may develop Master's degree programs of preparation leading to a provisional teaching certification and a Rank II classification under the foundation program. These programs will be available as an alternate route.

Section 1. Kentucky teacher education institutions may develop a Master of Arts in Teaching (MAT) program of preparation leading to provisional certification for teaching in grades K-4, 5-8, 9-12 and a Rank II classification under the foundation program in keeping with the following standards.

Section 2. Admission Requirements. Admission to the MAT program of teacher preparation shall require the following:

(1) A bachelor's degree from a regionally accredited institution with a grade point average of at least 2.5 on a 4.0 scale.

(2) Completion of one (1) of the following:

(a) Minimum scores of 400 on each of the three (3) sections of the Graduate Record Examination (GRE);

(b) Passing scores on the basic skills entrance tests approved by the State Board for Elementary and Secondary Education for admission to provisional certification programs; or

(c) A composite score of nineteen (19) on the American College Test (ACT).

Section 3. Curriculum Requirements. (1) General education. The general education component of the teacher preparation program shall be satisfied by the general studies requirements for the baccalaureate degree.

(2) Teaching specialization. Applicants admitted to the MAT program shall establish competency for the K-4 academic emphasis, for the middle grade teaching fields, or for secondary teaching specialization (majors, minors, areas of concentration) at a level comparable to the usual requirements in the curriculum area. Competency may be established through previous coursework, through coursework in the MAT program, examinations, and/or experience.

(3) Professional education.

(a) The professional education component shall require demonstrated competency or completion of coursework to fulfill the competency statements identified for the provisional certification being sought. Teacher education institutions may develop courses that synthesize and integrate the professional education knowledge base and may accelerate delivery of that knowledge base.

(b) Clinical and field experiences shall be provided at the appropriate grade level and teaching specialty to approximate the 150 clock hours required for provisional certification. The teacher education institution may give consideration to previous classroom experience.

(c) Supervised student teaching for a minimum of ten (10) weeks, full day, or an equivalent arrangement, shall be required.

Section 4. Exit Requirements. (1) The candidate admitted to the MAT program shall complete the requirements established by the institution for the MAT.

(2) The certification for candidates who complete the MAT program shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045.

Section 5. Evaluation. (1) Teacher education institutions shall prepare a program description (folio) for the MAT program following a format developed by the Division of Teacher Education and Certification. The folio shall be reviewed by the Reading Committee, and, if approved, submitted to the State Board of Elementary and Secondary Education for approval.

(2) Program quality and integrity of each MAT program shall be evaluated periodically by the following means:

(a) Internal institutional program review processes (public and independent institutions).

(b) Council on Higher Education program review process (public institutions).

(c) Accreditation and program approval processes by the National Council for the Accreditation of Teacher Education (NCATE) or the Kentucky Department of Education and State Board for Elementary and Secondary Education. The evaluation shall focus particularly on those program aspects where significant institutional discretion is permitted by the standards for the MAT programs.

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: September 13, 1989

FILED WITH LRC: September 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, October 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board for Elementary and Secondary Education at its September meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before October 20, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: Bachelors degree holders desiring to pursue teacher certification: approximately 20 per annum. Masters degree granting institutions of higher education: 10.

(a) Direct and indirect costs or savings to those affected: Individuals: tuition costs for required program of study. Institution: costs associated with establishing and offering new program and related courses.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Institutions must submit program proposals for approval by the state board that need guidelines established. Individuals must apply and be recommended by preparing institution for certification.

(2) Effects on the promulgating administrative body: Review programs submitted by institutions and make appropriate recommendations to state board. Review and grant/deny applications for certification from program graduate.

(a) Direct and indirect costs or savings:

Costs in staff time for administering and recordkeeping for program.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Processing and recordkeeping for institutional programs and individual program graduates seeking/receiving certification.
(3) Assessment of anticipated effect on state and local revenues: Costs involved in state universities offering these programs.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations required to be developed by Senate Joint Resolution 71 (1988).
(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

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:300. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions.
(1) 29 CFR Part 1910.1 shall read as follows:
"The provisions of this regulation adopt and extend the applicability of established federal standards contained in 29 CFR 1910 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."
(2) 29 CFR 1910.2 shall read as follows: As used in this part, unless the context clearly requires otherwise:
(a) "Act" means KRS Chapter 338.
(b) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.
(c) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.
(d) "Employee" means any person employed except those employees excluded in KRS 338.021.
(e) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."
(f) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.
(g) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.
(h) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

Section 3. 803 KAR 2:020 is repealed.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in

this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 803 KAR 2:020 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:301. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions.
(1) 29 CFR 1910.7, "Definition and Requirements for a Nationally Recognized Testing Laboratory," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.
(2) 29 CFR 1910.16(b)(2)(ix), "Longshoring and Marine Terminals," as published in the Federal Register, Volume 52, Number 186, September 25, 1987 is incorporated by reference.
(3) 29 CFR 1910.19(f) "Special Provisions for Air Contaminants," is removed as published in the Federal Register, Volume 50, Number 240, December 13, 1985, is incorporated by reference.
(a) 29 CFR 1910.19(i), "Special Provisions for Air Contaminants," as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is incorporated by reference.
(b) 29 CFR 1910.19(j), "Special Provisions for Air Contaminants," as published in the Federal Register, Volume Number 52, December 4, 1987, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative

body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
803 KAR 2:020 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:302. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR 1910.20, "Access to Employee Exposure and Medical Records," is amended as follows:
(1) 29 CFR 1910.20(e)(1)(i) is amended to read: "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."
(2) 29 CFR 1910.20(e)(1)(ii) is amended to read: "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"
(3) 29 CFR 1910.20(e)(1)(v) is added and shall read: "Original x-ray film will be made available to the employee and/or designated representative for inspection, review, and duplication under the supervision of the employer or his representative. The employer is not required to bear the cost of duplication of x-ray film."
(4) Amendments to 29 CFR 1910.20, "Access to Employee Exposure and Medical Records," as published in Federal Register, Volume 53, Number 189, September 29, 1988, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 803 KAR 2:020 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:303. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:
(1) Subparagraph 29 CFR 1910.23(a)(7) shall be amended to read as follows: "Every temporary or permanent floor opening shall have standard railings, or shall be constantly attended by someone."
(2) The amendments to 29 CFR 1910.28(f)(2), (g)(3), (h)(2) and (i)(1), "Safety Requirements for Scaffolding," as published in the Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 803 KAR 2:020 is repealed.
TIERING: Was tiering applied? No. The

Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:304. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: The amendments to 29 CFR 1910.35(h), "Definitions," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 803 KAR 2:020 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:305. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of

Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: Revision to 29 CFR 1910.68(e)(3), "Manlifts," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:020 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:306. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR 1910.95, "Hearing Conservation Program," is amended as follows:

(1) 29 CFR 1910.95(h)(1) shall read: Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz must be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests must include 8,000 Hz after January 15, 1985.

(2) 29 CFR 1910.95(h)(4) shall read:

Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. When an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(3) 29 CFR 1910.95(h)(5)(ii) shall read: Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this check. Deviations of fifteen (15) decibels or greater require an exhaustive calibration.

(4) 29 CFR 1910.95(h)(5)(iii) shall read: An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this calibration.

(5) 29 CFR 1910.95(L)(1) shall read: The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(6) 29 CFR 1910.95(o) shall read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(7) 29 CFR 1910.95 Appendix E shall read: Acoustic Calibration of Audiometers.

This Appendix is Mandatory.

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

(a) Sound Pressure Output Check.

1. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

2. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

3. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

4. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading."

(b) Linearity check.

1. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

2. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

3. For each ten (10) dB decrement on the audiometer the sound level meter should indicate a corresponding ten (10) dB decrease.

4. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

(c) Tolerances.

When any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 plus or minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than ten (10) dB at any test frequency.

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter reading dB
500	11.5	81.5
1000	7.0	77.0
2000	9.0	79.0
3000	10.0	80.0
4000	9.5	79.5
6000	15.5	85.5
8000	13.0	83.0

TABLE E-2 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-49 EARPHONES

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter reading dB
500	13.5	83.5
1000	7.5	77.5
2000	11.0	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5
8000	13.0	83.0

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing

shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:020 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:307. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.101(b), "Compressed Gases," shall be amended by revocation of referenced pamphlets P-1-1965 and the adoption of P-1-1974, herein filed by reference.

(2) The amendment to 29 CFR 1910.103(a)(1)(ii), "Hydrogen," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(3) 29 CFR 1910.106, "Flammable and Combustible Liquids" is amended as follows:

(a) 29 CFR 1910.106(a)(3) shall read: "The term automotive service station, or service stations, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture."

(b) The amendment to 29 CFR 1910.106(a)(35), "Flammable and Combustible Liquids," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(c) 29 CFR 1910.106(g)(1)(i)(g), "Flammable and Combustible Liquids," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is removed.

(4) The amendment to 29 CFR 1910.107(a)(8), "Spray Finishing Using Flammable and Combustible Materials," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(5) The amendment to 29 CFR 1910.108(a)(3), "Dip Tanks Containing Flammable or Combustible Liquids," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(6) The amendment to 29 CFR 1910.109(d)(2)

(iii)(a), "Explosives and Blasting Agents," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.
(7) The amendments to 29 CFR 1910.110(a)(14), (b)(2)(iii), (c)(5)(i)(g)(1) and (f)(5)(iv), "Storage and Handling of Liquefied Petroleum Gases," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.
(8) The amendments to 29 CFR 1910.111(b)(1)(ii) and the new paragraph 1910.111(b)(1)(vi), "Storage and Handling of Anhydrous Ammonia," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.
(9) 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in the Federal Register, December 19, 1986, Volume 51, No. 244, is incorporated by reference.
(a) Corrections to amendments to 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in Federal Register, Volume 52, Number 85, May 4, 1987, are incorporated by reference.
(b) 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in the Federal Register, Volume 54, Number 42, March 6, 1989, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
803 KAR 2:020 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:308. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR 1910.134 is amended as follows:
(1) 29 CFR 1910.134(c) shall read: "Proper selection of respirators shall be made according

to the guidance of American National Standard Practices for Respiratory Protection Z88.2 - 1980."

(2) 29 CFR 1910.134(d) the third sentence shall read: "Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1 - 1973."

(3) 29 CFR 1910.134(g) shall read: Identification of Air-purifying Respirator Canisters and Cartridges.

(a) The primary means of identifying an air-purifying respirator canister or cartridge shall be by means of properly worded labels. The secondary means of identifying an air-purifying respirator canister or cartridge shall be by an identifying color or colors.

(b) All who issue or use air-purifying respirators falling within the scope of this standard shall ensure that all canisters and cartridges purchased or used by them are properly labeled and colored in accordance with this standard before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters and cartridges have completely served their purpose. The user shall refer to the label wording to determine the type and degree of protection the canister or cartridge will afford.

(c) On each air-purifying respirator canister and cartridge, the following shall appear in bold letters:

CANISTER FOR _____
(Name of atmospheric contaminant)

or

CARTRIDGE FOR _____
(Name of atmospheric contaminant)

In addition, either or both of subparagraphs 1 and 2 of this paragraph, and subparagraph 3 of this paragraph, shall appear beneath the appropriate phrase on the canister or cartridge label.

1. For respiratory protection in atmospheres containing not more than _____ by volume of
(Concentration)

_____
(Name of atmospheric contaminant)

2. For respiratory protection in atmospheres containing

_____
(Type of particulate contaminant)

3. Do not use in atmospheres containing less than nineteen and five-tenths (19.5) percent oxygen by volume at sea level.

(d) Each respirator canister or cartridge, or canister or cartridge label, shall be a distinctive color as indicated in Table I-1. The color coating used shall offer a high degree of resistance to changes such as chipping, scaling, peeling, blistering, and fading, and to the effects of ordinary atmospheres to which they may be exposed under normal conditions of storage and use.

(4) 29 CFR 1910.134 Table I-1 shall read:

TABLE I-1
Color Assigned to Canister or Cartridge

Atmospheric Contaminant(s) to Be Protected Against	Color Assigned	ISCC-NBS Centroid Color Number	ISCC-NBS Centroid Color Name
Acid gases	White	263	White
Organic vapors	Black	267	Black
Ammonia gas	Green	139	Vivid green
Carbon monoxide gas	Blue	178	Strong blue
Acid gases and organic vapors	Yellow	82	Vivid yellow
Acid gases, ammonia, and organic vapors	Brown	75	Deep yellow brown
Acid gases, ammonia, carbon monoxide, and organic vapors	Red	11	Vivid red
Other vapors and gases not listed above	Olive	106	Light olive
Radioactive materials (except tritium and noble gases)	Purple	218	Strong purple
Dusts, fumes, and mists (other than radioactive materials)	Orange	48	Vivid orange

NOTES:

(1) A purple (ISCC-NBS Centroid Number 218) stripe shall be used to identify radioactive materials in combination with any vapor or gas.

(2) An orange (ISCC-NBS Centroid Number 48) stripe shall be used to identify dusts, fumes, and mists in combination with any vapor or gas.

(3) Where labels only are colored to conform with this table, the canister or cartridge body shall be gray (ISCC-NBS Centroid Number 265), or a metal canister or cartridge body may be left in its natural metallic color.

(4) The user shall refer to the wording of the label to determine the type and degree of protection the canister or cartridge will afford.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:020 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:309. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.141(c)(2)(i) shall read as follows: "Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy."

(2) Amendment to 29 CFR 1910.145(f), "Accident Prevention Tags," as published in Federal Register, Volume 51, Number 182, September 19, 1986, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations,

including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:020 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:310. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR 1910.151 relating to medical services and first aid shall be changed to read as follows:

(1) The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of occupational health.

(2) Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first aid and first aid supplies approved by the consulting physician, along with a signed list of these supplies, shall be readily available. Outside salesmen, truck drivers, seasonal labor, and others who while performing their duties, are away from the premises more than fifty (50) percent of the time are not to be included in determining the number of employees.

(3) All other employers shall, in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, have a person or persons adequately trained to render first aid. First aid supplies approved by the consulting physician shall be readily available.

(4) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
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(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
803 KAR 2:020 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:311. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:
(1) The amendments to 29 CFR 1910.155(c)(3)(i) and the new paragraph 1910.155(c)(3)(iv)(E), "Scope, Application and Definitions Applicable to this Subpart," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.
(2) 29 CFR 1910.156(a)(2), "Application," is amended to read: "The requirements of this section apply to fire brigades; industrial fire departments; private fire departments; and municipal public fire departments and fire protection districts. Personal protective equipment requirements apply to members of fire brigades and fire departments performing interior structural fire fighting. The requirements of this section do not apply to airport crash rescue, forest fire fighting operations, or volunteer fire fighters."
(3) Revision to 29 CFR 1910.157(f)(16), "Portable Fire Extinguishers," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative

body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 803 KAR 2:020 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:313. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:
(1) 29 CFR 1910.177(a)(2), "Servicing Multipiece and Single Piece Rim Wheels," shall be amended as follows:
(a) Amendments as published in the Federal Register, Volume 52, Number 186, September 25, 1987 are incorporated by reference.
(b) Amendments to 29 CFR 1910.177(b), "Servicing Multipiece and Single Piece Rim Wheels," as published in Federal Register, Volume 53, Number 174, September 8, 1988, are incorporated by reference.
(2) The amendment to 29 CFR 1910.178(a)(7), "Powered Industrial Trucks," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.
(3) Revisions to 29 CFR 1910.179(j)(2)(iii) and (iv), "Overhead and Gantry Cranes," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are incorporated by reference.
(4) Revision to 29 CFR 1910.179(m)(1), "Overhead and Gantry Cranes," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is incorporated by reference.
(5) Revision to 29 CFR 1910.180(d)(6), "Crawler Locomotive and Truck Cranes," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is incorporated by reference.
(a) Revisions to 29 CFR 1910.180(g)(1) and (2)(ii), "Crawler and Locomotive Truck Cranes," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are incorporated by reference.
(b) The amendment to 29 CFR 1910.180(i)(4)(i), "Crawler, Locomotive and Truck Cranes," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.
(6)(a) Revisions to 29 CFR 1910.181(g)(1) and (3), "Derricks," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are incorporated by reference.
(b) The amendment to 29 CRF 1910.181(j)(4)(i), "Derricks," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:020 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:314. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) The amendments to 29 CRF 1910.211(d)(11)(iii) and (12) and the new paragraphs 1910.211(d)(11)(iv), (61), (62), (63), (64), (65), and (66), "Definitions," as published in the Federal Register, Volume 53, Number 49, March 14, 1988, are incorporated by reference.

(2) 29 CFR 1910.217(b)(7)(xii) relating to machines using part revolution clutches shall be amended by adding the following: "This provision will not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the 'inch' position."

(a) Revisions to 29 CFR 1910.217(e)(1)(i) and (ii), "Mechanical Power Presses," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are incorporated by reference.

(b) The amendments to 29 CFR 1910.217(c)(3)(iii)(b) and the new paragraph (h) to 1910.217, "Mechanical Power Presses," as published in Federal Register, Volume 53, Number 49, March 14, 1988, are incorporated by reference.

(3) Revisions to 29 CFR 1910.218(a)(2)(i) and (ii), "Forging Machines," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

803 KAR 2:020 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:315. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: Amendments to 29 CFR 1910.243, "Guarding of Portable Powered Tools" as published in the Federal Register, Volume 50, Number 22, February 1, 1985 are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state

and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 803 KAR 2:020 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:316. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:
(1) The amendment to 29 CFR 1910.251(b), "Definitions," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.
(2) Subparagraph 29 CFR 1910.252(a)(6)(iv)(d)(2) shall be corrected to read as follows: "Wiring and electrical equipment in compressor or booster pump rooms or enclosures shall conform to the provisions of section 1910.309(a) for Class I, Division 2 locations." Revision to 29 CFR 1910.252(c)(6), "Welding, Cutting and Brazing," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 803 KAR 2:020 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections

toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:317. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) The amendment to 29 CFR 1910.265(d)(2)(iv)(c), "Sawmills," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(2) The amendments to 29 CFR 1910.266(c)(4)(iii) and (iv), "Pulpwood Logging," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(3) 29 CFR 1910.268(c), "Telecommunications," shall be revised as follows: Revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987, are incorporated by reference.

(4) 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 52, Number 251, December 31, 1987, is incorporated by reference. The amendments to 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 53, Number 96, May 18, 1988, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
803 KAR 2:020 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:318. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: The amendment to 29 CFR 1910.399(a)(1), "Subpart S - Electrical," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
803 KAR 2:020 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:319. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part

1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) Amendment to 29 CFR 1910.430(e)(1), "Commercial Diving Equipment," as published in the Federal Register, Volume 51, Number 181, September 18, 1986, is incorporated by reference.

(2) 29 CFR 1910.440(a)(1), "Commercial Diving Recordkeeping Requirements," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is removed.

(3) 29 CFR 1910 Subpart T Appendix B, "Commercial Diving Operations" as published in the Federal Register, Volume 50, Number 6, January 9 1985, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

803 KAR 2:020 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:320. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.1000, "Air Contaminants," Table Z-1 is amended as published in the Federal Register, Volume 50, Number 240, December 13, 1985, is incorporated by reference. 29 CFR 1910.1000, "Air Contaminants," Tables Z-1-A, Z-2 and Z-3 as published in Federal Register, Volume 54, Volume Number 12, January 19, 1989 are incorporated by reference.

(2) 29 CFR 1910.1000, Table Z-2, "Benzene," shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 176, September 11, 1987 are incorporated

by reference.

(3) 29 CFR 1910.1000, Table Z-2, "Formaldehyde," as published in the Federal Register, Volume Number 52, December 4, 1987, is amended.

(4) 29 CFR 1910.1001, "Asbestos," is amended as follows:

(a) Amendments as published in the Federal Register, Volume 51, Number 119, June 20, 1986, are incorporated by reference.

(b) 29 CFR 1910.1001(d)(6)(ii) is amended to read: "The employer shall ensure that all sampling will be conducted in accordance with the ORM in Appendix A, before sampling commences."

(c) 29 CFR 1910.1001(d)(6)(iv) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the criterion specified in Appendix A. This notice shall be given prior to the start of the analyses."

(d) 29 CFR 1910.1001(g)(3)(i) is amended to read: "Where respiratory protection is required, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 - 1980, with the exception of Appendix A5, Suggested Procedures for Carrying Out Qualitative Respirator - Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator - Fitting Tests."

(e) 29 CFR 1910.1001(j)(1)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (j)(1)(i) of the section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"

(5) 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophylite, and Actinolite," as published in Federal Register, October 17, 1986, Volume 51, No. 201, is incorporated by reference.

(6) 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophylite, and Actinolite," as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference. Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.

(7) 29 CFR 1910.1005 "4,4'-methylene bis (2-chloroaniline)" and 29 CFR 1910.1003 through .1016 paragraphs (c)(6), "Laboratory Activities," printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

(8) Paragraph 1910.1005(c)(7) of the 29 CFR 1910 General Industry Standards shall read as follows: "Premixed Solutions: Where 4,4'-methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however, (i) only authorized employees shall be permitted to handle such materials."

(9) 29 CFR 1910.1025, "Occupational Exposure to Lead" shall be amended as follows: "Table 1 - Implementation Schedule" is amended to read:

TABLE 1 - Implementation Schedule

INDUSTRY[1]	COMPLIANCE DATES 200 ug/m3	100 ug/m3	50 ug/m3
Primary Lead Production	(2)	June 29, 1984	June 29, 1991
Secondary Lead Production	(2)	June 29, 1984	June 29, 1986
Lead Acid Battery Manufacture	(2)	June 29, 1983	June 29, 1986
Automobile/Manufacture/Solder Grinding	(2)	N/A	June 29, 1988
Electronics, Gray Iron Foundries, Ink Manufacture, Paints and Coatings Manufacture, Wall Paper Manufacture, Can Manufactures, and Printing	(2)	N/A	June 29, 1982
Lead Pigment Manufacture, Nonferrous Foundries, Leaded Steel Manufacture, Lead Chemical Manufacture, Ship Building and Ship Repair, Battery Breaking in the Collection and Processing of Scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), Secondary Smelting of Copper, and Lead Casting	(2)	N/A	N/A
All Other Industries	(2)	N/A	June 11, 1984

[1] Includes ancillary activities located on the same worksite.

[2] On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

(10) 29 CFR 1910.1028, "Benzene," as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is incorporated by reference.

(11) 29 CFR 1910.1029, "Coke Oven Emissions," shall be amended as follows: Revision as published in the Federal Register, Volume 50, Number 178, September 13, 1985 are incorporated by reference.

(12) Corrections to 29 CFR 1910.1043, "Cotton Dust," as published in the Federal Register, Volume 51, Number 128, July 3, 1986, are incorporated by reference.

(13) Amendments and corrections to 29 CFR 1910.1047, "Ethylene Oxide and Appendices A, B, C and D," as published in the Federal Register, Volume 51, Number 132, July 10, 1986 are incorporated by reference.

(a) The amendments to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide," as published in the Federal Register, Volume 53, Number 66, April 6, 1988, are incorporated by reference.

(b) Revisions to 29 CFR 1910.1047,

"Occupational Exposure to Ethylene Oxide," as published in Federal Register, Volume 53, Number 143, July 26, 1988, are incorporated by reference.

(14) 29 CFR 1910.1048, "Formaldehyde," as published in the Federal Register, Volume Number 52, December 4, 1987, is incorporated by reference. Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde," as published in Federal Register, Volume 53, Number 170, September 1, 1988, are incorporated by reference.

(15) 29 CFR 1910.1200, "Hazard Communication," shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 163, August 24, 1987 are incorporated by reference.

(16) Revision of 29 CFR 1910.1200(i)(3), "Hazard Communication," and an amendment removing the last paragraph in 1910.1200 Appendix D, as published in the Federal Register, Volume 51, Number 189, September 30, 1986, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:020 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:400. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR Part 1926.1 shall read as follows: The provisions of this regulation incorporate and extend the applicability of established federal standards contained in 29 CFR Part 1926 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:403. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1926.58, "Asbestos, Tremolite, Anthophylite, and Actinolite," as published in the Federal Register, Volume 51, Number 119, June 20, 1986 is adopted by reference with the following amendments:

(a) 29 CFR 1926.58(e)(6)(iii) is amended to read: "The employer shall ensure that contractors provide in writing that they have a competent person meeting the requirements of paragraph (b) "competent person" and paragraphs (e)(6)(ii) and (III) before work commences."

(b) 29 CFR 1926.58(f)(3) is amended to read: "The respirators required by this exception are to be Type "C" supplied - air respirators; continuous flow or pressure - demand class."

(c) 29 CFR 1926.58(f)(5)(ii) is amended to read: "The employer shall ensure that all sampling is conducted in accordance with the ORM in Appendix A before sampling commences."

(d) 29 CFR 1926.58(f)(5)(iii) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the qualifications listed in Appendix A. This notice shall be given prior to the start of the analyses."

(e) 29 CFR 1926.58(h)(3)(i) is amended to read: "Where respiratory protection is used, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 - 1980, with the exception of Appendix A5,

Suggested Procedures for Carrying Out Qualitative Respirator - Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator - Fitting Tests."

(f) 29 CFR 1926.58(j)(2)(1) is amended to read: "The decontamination area shall be separated from the regulated area by an air lock. Air locks shall be used to separate the clean room, shower area and equipment room. An "air lock" is an open area used to separate the clean room, shower room and equipment room from each other; and to separate the decontamination area from the work area. It is accessible through doorways protected by two overlapping polyethylene sheets."

(g) 29 CFR 1926.58(k)(1)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (k)(1)(i) of this section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"

(h) 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.

(i) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.

(2) 29 CFR 1926.59, "Hazard Communication," as published in Federal Register, August 24, 1987, Volume 52, Number 163, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:404 Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part

1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR 1926.103, "Respiratory Protection," Table E-4 is amended as follows:

Table E-4
Respirator Protection Factors[a]

Type of Respirator	Permitted for Use in Oxygen-deficient Atmosphere	Permitted for Use in Immediately-dangerous-to-life-or-health Atmosphere[f]	Respirator Protection Factor	
			Qualitative Test	Quantitative Test
Particulate-filter, quarter-mask or half-mask facepiece[b,c]	No	No	10	As measured on each person with maximum of 100.
Vapor-or gas-removing, quarter-mask or half-mask facepiece[c]	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas,[i,j] whichever is less.
Combination particulate-filter and vapor- or gas-removing, quarter-mask or half-mask facepiece[b,c]	No	No	10, or maximum use limit or cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas,[i,j], whichever is less.
Particulate-filter, full facepiece[b]	No	No	100	As measured on each person with maximum of 100 if dust, fume or mist filter is used, or maximum of 1000 if high-efficiency filter is used.
Vapor- or gas-removing, full facepiece	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 1000, or maximum use limit of cartridge or canister for vapor or gas[i,j], whichever is less.
Combination particulate-filter and vapor- or gas-removing, full facepiece[b]	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100 if dust, fume or mist filter is used and maximum of 1000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.
Powered particulate-filter, any respiratory-inlet covering[b,c,d]	No	No (yes, if escape provisions are provided[d])	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used.	

Powered vapor- or gas-removing, any respiratory-inlet covering[c,d]	No	No (yes, if escape provisions are provided[d])	N/A	N/A
	No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 3000, or maximum use limit of cartridge or canister for vapor or gas[i,j] whichever is less.			
Powered combination particulate-filter and vapor- or gas-removing, any respiratory-inlet covering[b,c,d]	No	No (yes, if escape provisions are provided[d])	N/A	N/A
	No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas,[i,j] whichever is less.			
Airline, demand, quarter-mask or half-mask facepiece, with or without escape provisions[c,e]	Yes[f]	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values
Airline, demand, full facepiece, with or without escape provisions[e]	Yes[f]	No	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values
Airline, continuous flow or pressure demand type, any facepiece, without escape provisions[c]	Yes[f]	No	N/A	N/A
	No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.			
Airline, continuous flow or pressure demand type, any facepiece, with escape provisions[c,e]	Yes[g]	Yes	N/A	N/A
	No tests are required due to positive-pressure operation of respirator. The maximum protection factors is 10000 plus[h].			
Airline, continuous flow, helmet, hood, suit without escape provisions	Yes[f]	No	N/A	N/A
	No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.			
Airline, continuous flow, helmet, hood, or suit, with escape provisions[e]	Yes[g]	Yes	N/A	N/A
	No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus[h].			

Hose mask, with or without blower, full facepiece	Yes[f]	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, quarter-mask or half-mask facepiece[c]	Yes[f]	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, full facepiece or mouthpiece/nose clamp[c]	Yes[f] (Yes, if respirator is used for mine rescue and mine recovery operations.)	No (yes, if respirator is used for mine rescue and mine recovery operations.)	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values except when the respirator is used for mine rescue and mine recovery operations.
Self-contained breathing apparatus, pressure-demand-type open-circuit or positive-pressure-type closed-circuit, quarter-mask or half-mask facepiece, full facepiece, or mouthpiece/nose clamp[c]	Yes[g]	Yes	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus.
Combination respirators not listed.	The type and mode of operation having the lowest respirator protection factor shall be applied to the combination respirator.			

N/A means not applicable since a respirator-fitting test is not carried out.

[a] A respirator protection factor is a measure of the degree of protection provided by a respirator to a respirator wearer. Multiplying the permissible time-weighted average concentration or the permissible ceiling concentration, whichever is applicable, for a toxic substance, or the maximum permissible airborne concentration for a radionuclide, by a protection factor assigned to a respirator gives the maximum concentration of the hazardous substance for which the respirator can be used. Limitations of filters, cartridges, and canisters used in air-purifying respirators shall be considered in determining protection factors.

[b] When the respirator is used for protection against airborne particulate matter having a permissible time-weighted average concentration less than 0.05 milligram particulate matter per cubic meter of air or less than 2 million particles per cubic foot of air, or for protection against airborne radionuclide particulate matter, the respirator shall be equipped with a high-efficiency filter(s).

[c] If the air contaminant causes eye irritation, the wearer of a respirator equipped with a quarter-mask or half-mask facepiece or mouthpiece and nose clamp shall be permitted to use a protective goggle or to use a respirator equipped with a full facepiece.

[d] If the powered air-purifying respirator is equipped with a facepiece, the escape provision means that the wearer is able to breathe through the filter, cartridge, or canister and through the pump. If the powered air-purifying respirator is equipped with a helmet, hood, or suit, the escape provision shall be an auxiliary self-contained supply of respirable air.

[e] The escape provision shall be an auxiliary self-contained supply of respirable air.

[f] "Oxygen deficiency - not immediately dangerous to life or health" - an atmosphere having an oxygen concentration below the minimum legal requirement but above that which is immediately dangerous to life or health.

[g] "Oxygen deficiency - immediately dangerous to life or health" - an atmosphere which causes an oxygen partial pressure of 100 millimeters of mercury column or less in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor.

[h] The protection factor measurement exceeds the limit of sensitivity of the test apparatus. Therefore, the respirator has been classified for use in atmospheres having unknown concentrations of contaminants.

[i] The service life of a vapor- or gas-removing cartridge or canister depends on the specific vapor or gas, the concentration of the vapor or gas in air, the temperature and humidity of the air, the type and quantity of the sorbent in the cartridge or canister, and the activity of the respirator wearer. Cartridges and canisters may provide only very short service lives for certain vapors and gases. Vapor/gas service life testing is recommended to ensure that cartridges and canisters provide adequate service lives. Reference should be made to published reports which give vapor/gas life data for cartridges and canisters.

[j] Vapor- and gas-removing respirators are not approved for contaminants that lack adequate warning properties of odor, irritation, or taste at concentrations in air at or above the permissible exposure limits.

NOTE: Respirator protection factors for air-purifying-type respirators equipped with a mouthpiece/nose clamp form of respiratory-inlet covering are not given, since such respirators are approved only for escape purposes.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:405. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:
(1) Amendment to 29 CFR 1926.151(a)(1), as published in the Federal Register, Volume 51, Number 133, July 11, 1986 is incorporated by reference.
(2) Revision to 29 CFR 1926.152(b)(4)(v) as published in the Federal Register, Volume 51, Number 133, July 11, 1986 is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 803 KAR 2:030 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:406. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR 1926.200(g)(2), .201(a)(2) and .202 shall be amended to require signs, signaling and barricades to conform to specifications as set forth in ANSI D6.1, "Manual of Uniform Traffic Control Devices for Streets and Highways," (1978 Edition). Revisions, Numbers 1 through 4, as adopted by ANSI D6.1 (1978 edition), "Manual on Uniform Traffic Control Devices," are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:409. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: Revision to 29 CFR 1926.351(d)(5), as published in the Federal Register, Volume 51, Number 133, July 11, 1986 is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 803 KAR 2:030 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:410. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: Revision of 29 CFR 1926, Subpart K, "Electrical," 1926.400, .401, .402, .403, .405, .406, .407, .408, .409, .416, .417, .418, .431, .432, .433, .441, .442 and .449, as published in Federal Register, Volume 51, Number 133, July 11, 1986 is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:411. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR 1926.451(a)(4) shall read as follows: Guardrails and toeboards shall be installed on all open sides and ends of platforms more than ten (10) feet above the ground or floor, except needle beam scaffolds and floats (see paragraphs (p) and (w) of this section). Toeboards shall not be required on the loading side of platforms which are loaded by means of a high lift tractor or fork truck provided that employees are prohibited from entering the area beneath the scaffolding where they could be exposed to objects which might fall from the scaffolding. Scaffolds four (4) to ten (10) feet in height, having a minimum horizontal dimension in either direction of less than forty-five (45) inches, shall have standard guardrails installed on all open sides and ends of the platform.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 803 KAR 2:030 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:413. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:
(1) 29 CFR 1926.550(b)(2), "Cranes and Derricks," shall be revised as follows: revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987 are incorporated by reference.
(2) Additions to 29 CFR 1926.550 (Section g), "Cranes and Derricks," as published in Federal Register, Volume 53, Number 148, August 2, 1988, are incorporated by reference.
(3) 29 CFR 1926.552(b)(8) of the paragraph on "Material Hoists," shall read as follows: All material hoists shall conform to the requirements of ANSI A10.5-1969, Safety Requirements for Material Hoists, with the exception that material hoists manufactured prior to January 1, 1970 may be used with a drum pitch diameter at least eighteen (18) times the normal rope diameter provided the hoisting wire rope is at least equal in flexibility to 6 x 37 classification wire rope.
(4) 29 CFR 1926.552(c)(15), "Material Hoists, Personnel Hoists and Elevators," shall be revised as follows: revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987 are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing

costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
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(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 803 KAR 2:030 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:414. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: Revoke paragraph "514 - Warning Device" of ANSI B56.1 - 1969 - Safety Standards for Powered Industrial Trucks and adopt paragraph "512 - Warning Device" of ANSI B56.1 - 1975 - Low Lift and High Lift Trucks for standard reference as specified in 29 CFR 1926.602(c)(1)(vi): effective July 1, 1979.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:416. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: Revisions to 29 CFR 1926, Subpart Q, "Concrete, Concrete Forms and Shoring," (now "Concrete and Masonry Construction"), as published in Federal Register, Volume 53, Number 116, June 16, 1988, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor
803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 803 KAR 2:030 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:418. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following

regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: Revision of 29 CFR 1926.803(j)(3), as published in the Federal Register, Volume 51, Number 133, July 11, 1986 is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:420. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) The following paragraphs of 29 CFR 1926, Subpart U, "Blasting and the Use of Explosives," which were previously incorporated by reference, are hereby revised and shall read as follows:

(a) 1926.900(k)(3)(i), The prominent display of adequate signs warning against the use of mobile radio transmitters, on all roads within 1,000 feet of blasting operations. Whenever adherence to this 1,000 foot distance would create an operational handicap, a competent person shall be consulted to evaluate the particular situation, and alternative provisions

may be made which are adequately designed to prevent premature firing of electric blasting caps. The competent person may be a blaster certified by the Kentucky Department of Mines and Minerals with a working knowledge of mobile radio transmission and receiving hazards as related to use of electric blasting cap firing systems and designated by the employer. A description of any alternative shall be in writing describing the unusual conditions at the site and the alternative measure used. The description shall be maintained at the construction site during the duration of the work and shall be available for inspection by representatives of the Commissioner, Kentucky Department of Labor.

(b) 1926.900(k)(4), Ensuring that mobile radio transmitters which are less than 100 feet away from electric blasting caps, in other than original containers, shall be de-energized, and have the radio transmission circuit or vehicle effectively locked against transmitter usage.

(c) 1926.900(p), The use of black powder shall be prohibited except when a desired result cannot be obtained with another type of explosive, such as in quarrying certain types of dimension stone.

(d) 1926.900(r), All electric blasts shall be fired with an electric blasting machine or properly designed electric power source, and in accordance with the provisions of subsection .906(a) and (r).

(2) 1926.902(d), Explosives or blasting agents shall be transported in separate vehicles unless the detonators are packaged in specified containers and transported all in compliance with DOT Regulation 49 CFR 177.835(g).

(3) 29 CFR 1926.903(e), Underground Transportation of Explosives, shall be revised as follows: Revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987 are incorporated by reference. 1926.903(o) deleted.

(4) 1926.905(h), Machines and all tools not used for loading explosives into the boreholes shall be removed from the immediate location of holes before explosives are delivered. Equipment shall not be operated within fifty (50) feet of a loaded hole except that which is required when the containment of the blast is necessary to prevent flyrock. When equipment or machinery is used to place mats, overburden, or protective material on the shot area, a competent person (who may be a blaster certified by the Kentucky Department of Mines and Minerals) shall implement adequate precautions to protect the lead wires or initiating systems such as protecting the components from direct contact with materials which sever, damage, impact, or conduct stray currents to the explosives system. This would include preventing the dragging of blasting mats or running over the holes and systems with the equipment used.

(a) 1926.905(i), No activity of any nature other than that which is required for loading holes with explosives and preparation required for initiating the blast and containment of flyrock from the blast shall be permitted in a blast area.

(b) 1926.905(k), Holes shall be inspected prior to loading to determine depth and conditions. When necessary to drill a hole in proximity to a charged or misfired hole, the distance between these two holes must be greater than the depth being drilled and precautions taken to ensure the integrity of any adjacent-charged hole or misfired hole. This distance must be determined by a competent person (who may be a blaster certified by the Kentucky Department of Mines and Minerals) in order to insure that there is no danger of intersecting the charged or misfired hole.

(c) 1926.905(n), In blasting, explosives in Fume Class I, as set forth by the Institute of the Makers of Explosives, shall be used; however, Fume Class I explosives are not required when adequate ventilation is provided and the workings are abandoned for a period of time sufficient to allow dissipation of all fumes.

(5) 1926.906(p), The blaster shall be in charge of the blasting machines, and no other person shall connect the leading wires to the machine except under the immediate physical and visual supervision of the blaster.

(a) 1926.906(q), Blasters, when testing circuits to charged holes, shall use only blasting galvanometers equipped with a silver chloride cell especially designed for this purpose or an instrument designed solely for use in blasting, which incorporates a current-limiting device into its circuitry. No instrument capable of producing over fifty (50) milliamps on direct short circuit shall be used.

(b) 1926.906(s), Leading wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.

(6) 1926.907(a), The use of a fuse that has been hammered or injured in any way shall be forbidden.

(7) 1926.910(b), Sufficient time shall be allowed, not less than fifteen (15) minutes in tunnels, for the smoke and fumes to leave the blasted area before returning to the shot. An inspection of the area and the surrounding rubble shall be made by the blaster to determine if all charges have been exploded before employees are allowed to return to the operation.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:421. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numberical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: Amend subparagraph 1926.950(c)(1)(i) to read as follows:

"The employee is insulated or guarded from the energized part. Insulating gloves, as well as insulating sleeves when necessary, rated for the voltage involved shall be considered insulation of the employee from the energized part, or ....."

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
803 KAR 2:030 is repealed.
TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:500. Adoption of 29 CFR Part 1915, 1917, 1918 and 1919, Maritime employment.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. The Occupational Safety and Health Standards Board hereby incorporates Chapter 29, Part 1915 as published in the April 20, 1983, Federal Register, Part 1917 as published in July 5, 1983, Federal Register, and Parts 1918 and 1919 of the Code of Federal Regulations, revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:
(1) 29 CFR 1915.1, 1918.1, and 1919.1 shall read as follows: "The provisions of this regulation adopt and extend the applicability of established Federal Maritime Standards contained in 29 CFR 1915, 1916, 1917, 1918, and 1919 to all Maritime employers, Maritime employees, and places of Maritime employment throughout the Commonwealth except those excluded in KRS 338.021."
(2) 29 CFR 1915.4(b) and 1918.3(b), "Secretary," means Secretary of Labor, Kentucky Labor Cabinet, Commonwealth of Kentucky, or his authorized representatives.
(3) 29 CFR 1919.2(D), "Assistant Secretary" is changed to read: "Secretary" means the Secretary of Labor, Kentucky Labor Cabinet, Commonwealth of Kentucky, or his authorized representative.
(4) 29 CFR 1915.97, "Health and Sanitation," is revised to read as follows: Revisions as published in the Federal Register, Volume 52, Number 163, August 24, 1987.
(5) 29 CFR 1915.99, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.
(6) Revision to 29 CFR 1915.113(b)(1), "Shackles and Hooks," as published in the Federal Register, Volume 51, Number 188, September 29, 1986 is incorporated by reference.
(7) Revision to 29 CFR 1915.172(d), "Portable Air Receivers and Other Unfired Pressure Vessels," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is incorporated by reference.
(8) 29 CFR 1917.1(a)(2)(x), "Marine Terminals," as published in the Federal Register, Volume Number 52, December 31, 1987, is incorporated by reference.
(9) 29 CFR 1917.1(a)(2)(ix), "Scope and Applicability," as published in the Federal Register, Volume 52, Number 186, September 25, 1987 is incorporated by reference.
(10) 29 CFR 1917.28, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.
(11) 29 CFR 1917.44(o), "General Rules Applicable to Vehicles," shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 186, September 25, 1987 are incorporated by reference.
(12) 29 CFR 1917.72, "Grain Elevators," (reserved) as published in the Federal Register, Volume Number 52, December 31, 1987, is removed.
(13) 29 CFR 1918.90, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.
(14) 29 CFR 1919.2(e) "Administration" is changed to read: "Program" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky.
(15) An employer, required under 29 CFR 1915, 1918 or 1919 to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 30, 1989
FILED WITH LRC: September 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky

Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:027 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:027 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:600. Adoption of 29 CFR Part 1928.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of agriculture.

Section 1. The Occupational Safety and Health Standards Board hereby incorporates Chapter 29, Part 1928 of the Code of Federal Regulations revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions and deletions:

(1) 29 CFR 1928, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(2) 29 CFR Part 1928.1 shall read as follows: "This part contains Occupational Safety and Health Standards applicable to agriculture operations. The provisions of this regulation adopt and extend the applicability to established federal standards contained in 29 CFR Part 1928 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

(3) 29 CFR "Field Sanitation," as published in the Federal Register, Volume Number 52, May 1, 1987, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: August 30, 1989

FILED WITH LRC: September 15, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1989 at 1:30 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1989, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:032 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive change is made in this regulation.

(1) Type and number of entities affected:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: 803 KAR 2:032 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 2:011. Repeal of 902 KAR 2:010.

RELATES TO: KRS 211.180, 214.010, 214.020

STATUTORY AUTHORITY: KRS 195.040, 211.090

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to implement a statewide program for the detection, prevention and control of communicable diseases. This regulation repeals 902 KAR 2:010 which had adopted the booklet "Control of Communicable Diseases in Man," which is no longer relied on.

Section 1. 902 KAR 2:010, Definitions and methods of control, is hereby repealed.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 12, 1989

FILED WITH LRC: September 14, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing has been scheduled for October 23, 1989 at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing wil be cancelled unless interested persons notify the following office in writing by October 18, 1989 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Reginald Finger

(1) Type and number of entities affected: Commonwealth of Kentucky and Kentucky health professionals.

(a) Direct and indirect costs or savings to those affected: None to health professionals.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: The regulation which incorporates a 400 page document by reference will not have to be changed and updated when new editions are published, consequently many man-hours will be saved in future.

(a) Direct and indirect costs or savings:

1. First year: Cost of changing regulations.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

(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: Any alternative would cause the same concerns, since medical technology changes constantly.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Much of the material in the reference document is duplicative of 902 KAR 2:020 through 2:090.

(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. Regulation is being repealed in its entirety.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 4:100. Maternal and child health services.

RELATES TO: KRS 194.050

STATUTORY AUTHORITY: KRS 194.030, 200.460, 200.470, 200.490, 211.900, 213.410, 214.155, 214.160, 241.185

NECESSITY AND FUNCTION: The Cabinet for Human Resources, Department for Health Services is responsible for administering the programs of

services in accordance with Title V of the Social Security Act (maternal and child health block grant). KRS 194.050 empowers the secretary to promulgate such regulations as are necessary to implement programs that qualify for the receipt of federal funds. This regulation sets forth the eligibility requirements for receipt of services under certain maternal and child health programs and describes the minimum types of services under each of those programs.

Section 1. Financial Eligibility Requirements. Financial eligibility for the maternal and child health prenatal program, well child program, and regional pediatrics program shall be based on 185 percent of the current Poverty Income Guidelines, published annually in the Federal Register by the Department of Health and Human Services. Persons meeting additional eligibility requirements and whose family income is at or below 185 percent of the federal poverty level are eligible for the services of the programs.

Section 2. Description of Services and Additional Eligibility Criteria. (1) Prenatal services. Minimum services to be provided or arranged in accordance with the standards developed for the prenatal program are:

(a) Outreach;
(b) Pregnancy testing/confirmation;
(c) Contact visit counseling;
(d) Initial examination;
(e) Subsequent monitoring visits;
(f) Laboratory tests, as necessary;
(g) Individual counseling;
(h) Prenatal classes;
(i) Delivery;
(j) Initial infant assessment;
(k) Hospitalization;
(l) Postpartum visit;
(m) Family planning visit;
(n) Arrange for follow-up for prenatal program infants; and
(o) Home visits.

(2) Well child services. Minimum services to be provided in accordance with the standards developed for the well child program are:

(a) Health and developmental history;
(b) Unclothed physical examination;
(c) Developmental assessment
(d) Vision and hearing testing;
(e) Nutritional assessment;
(f) Laboratory testing;
(g) Anticipatory guidance and health education;
(h) Referral for acute, chronic, or handicapping conditions, with preauthorized payment for physician services, pharmacy or laboratory tests for acute conditions identified during the preventive health assessment; and
(i) Nursing follow-up of referrals.

Services are to be appropriate for age and health history. Services may be provided to children not eligible for medical assistance aged birth through six (6) years of age, infants up to one (1) year of age of women enrolled in the prenatal program, children from seven (7) to twenty-one (21) years of age enrolled in the regional pediatric clinic program.

(3) Regional pediatrics services. Minimum services to be provided in accordance with the standards developed for the regional pediatrics program are:

(a) Diagnostic evaluation and management clinics by a pediatrician;
(b) Preventive health care;
(c) Referrals for specialty medical consultation or special procedures;
(d) Medications;
(e) Appliances; and
(f) Follow-up nursing care.

To be eligible for the regional pediatric program, the child must be in the age range of birth to twenty-one (21) years, and have a chronic condition or suspected chronic illness or disability not covered by other state or community agencies. Preventive health care, specialty consultation, special procedures, medications and appliances are available with preauthorization only to children who receive ongoing medical management through regional pediatric clinics.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 14, 1989
FILED WITH LRC: September 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 23, 1989, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 18, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patricia K. Nicol, M.D.
(1) Type and number of entities affected: All local health departments and agencies providing MCH services; and all pregnant women, infants & children at or below 185% of poverty.
(a) Direct and indirect costs or savings to those affected: Does not affect costs, merely changes format in which regulation appears.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional cost factors.
(b) Reporting and paperwork requirements: No additional paperwork.
(2) Effects on the promulgating administrative body: No additional effects.
(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: No additional reporting or paperwork.
(3) Assessment of anticipated effect on state and local revenues: No additional effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No available alternatives.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering not

applicable. Patients below 185% of poverty qualify; patients above do not. There is currently no sliding fee scale for these services since they are not open to the general public.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title V of the Social Security Act - Maternal and child Health Block Grant.

2. State compliance standards. Contained in annual report of intended expenditures and approved annually by the Department of Health and Human Services.

3. Minimum or uniform standards contained in the federal mandate. Broad array of maternal and child health (MCH) services in accordance with block grant regulation to low-income populations in need of such services.

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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes__X__ No___ Relates to maternal and child health services provided through local health departments.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will only affect local health departments.

3. State the aspect or service of local government to which this administrative regulation relates. Maternal and child health services provided by local health departments.

4. How does this administrative regulation affect the local government or any service it provides? It sets forth eligibility requirements for certain maternal and child health.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the September 5 and 6, 1989 Meeting

The September meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, September 6, 1989 at 1 p.m. and on Thursday, September 7, 1989 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 Quinlan, seconded by Senator Huff, the minutes of the August 3, 1989 meeting were approved.

Present September 6, 1989 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representatives Jim Bruce, Ronny Layman and Tom Kerr.

Present September 7, 1989 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Gene Huff and Pat McCuiston; Representatives Jim Bruce and Tom Kerr.

Guests: Representative Ron Cyrus; Richard Carroll, Board of Chiropractic Examiners; Lauren Schaaf, Don R. McCormick, Thomas A. Young, Department of Fish and Wildlife Resources; Michael Bradley, Ellen Tharpe, Corrections Cabinet; Christopher W. Johnson, Justice Cabinet; Lyle C. Craycroft, Sandy Pullen, Transportation Cabinet; Wendell D. Bruce, Art Craig, Clara DeMoss, Robert Elder, William K. Evans, Linda F. Hargan, Ken Ison, Sam Jackson, Bill McCann, Brenda Rollins, R. C. Story, Hanson Williams, Department of Education; Guy Schoolfield, Kembra Taylor, Labor Cabinet; Oscar Morgan, Jr., Glenn Schilling, Department of Workers' Claims; Maria Fitzpatrick, Ronda S. Paul, Thomas W. Stout, Department of Financial Institutions; Barbara Coleman, Karen Doyle, Ked Fitzpatrick, Sally Gordon, John Gray, Eugenia Jump, Peggy S. Kidd, Frank Kirk, Janie Miller, Anita Moore, J. R. Nash, Bill Robinson, Joyce Young, Cabinet for Human Resources; Debbie Tibbs, Aetna; Rosalie Frederick, Allient Health System; Marilyn Stratton Smith, American International Health & Rehabilitation Services; Larry Curella, Crawford Health & Rehabilitation Services; Jennifer Owens, Jackie Rogers, Fortis Corporation; Cathy Overberg, Gates McDonald; Joni Yeager, General Rehabilitation Services; Jo S. Barrett, Humana Hospital Southwest; Catherine M. Dawson, Mark Moore, Intracorp; Michael Dudgeon, Dandridge F. Walton, KY Association of Health Care Facilities; Therese Marshall, KY Chapter of National Association of Rehabilitation Professionals in the Private Sector; Nancy Galvagni, KY Hospital Association; Bill Young, KY Manufactured Housing Institute; Bill Doll, KY Medical Association; Dub Wilkins, K.S.I.A.; Melinda Easley, Martha Reynolds, Liberty Mutual Insurance Co.; Charles J. Beaven, Mark Todd, St. Anthony Medical Center; Nelson Weaver, Trover Clinic; David E. Boswell, Governor's Office; Ed Holloway.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Susan Eastman, Donna Pierce and Carla Arnold.

The Administrative Regulation Review Subcommittee met on September 6 and 7, 1989, and submits this report:

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

General Government Cabinet: Board of Chiropractic Examiners

201 KAR 21:075 (Peer review procedures and fees.) This administrative regulation was amended as follows: Section 2(6) the words "Any party" and the word "party" were deleted and the following phrase was inserted in lieu thereof: "A chiropractor, insurer or other third party payor". This amendment was made to meet the recommendation of the Subcommittee that patients not be charged for peer review. Chairman O'Brien expressed his concern that an objection might be raised over the exemption provided patients and not extended to other parties.

Corrections Cabinet: Office of the Secretary

501 KAR 6:030 (Kentucky State Reformatory.) KRS 09-00-29 and 13-00-11 were amended to comply with the drafting requirement of KRS 13A.222 that prohibits the use of "(s)" to designate singular or plural.

501 KAR 6:050 (Luther Luckett Correctional Complex.) LLCC 20-02-01 was amended to comply with various drafting requirements of KRS 13A.222.

501 KAR 6:060 (Northpoint Training Center.) NTC 06-01-02 was amended by adding the following statutory reference: "KRS 61.876(h) and (i)". Discussion centered around access to public records with the agency giving the reasons for denying access to certain confidential material to comply with federal law.

Justice Cabinet: Department of State Police: Candidate Selection

502 KAR 45:010 (Definitions.) Section 1(4) was amended to delete the words "has successfully completed the prescribed course of instruction at the state police academy". This amendment was made to conform to the definition of officer found in KRS 16.010(4). Section 1(5) was amended to replace the parentheses with brackets in order to signify deleted language.

Transportation Cabinet: Property Acquisition and Uniform Relocation

600 KAR 3:020 (Grave relocation.) The "Relates to" section was amended to cite KRS Chapter 381. Section 7 was amended to delete the restriction of those who could attend a memorial service on disinterment or reinterment.

Education and Humanities Cabinet: Department of Education: Office of Local Services: General Administration

702 KAR 1:115 (Annual in-service training of district board members.) Amendments were made to to Section 3(1)(d) to conform with the drafting requirements of KRS 13A.222.

Pupil Transportation

702 KAR 5:010 (Responsibilities of division.) This regulation was amended in the "Necessity and Function" paragraph by deleting the words "will be enabled and empowered" and inserting in lieu thereof the word "may".

Teacher Certification

704 KAR 20:070 (Provisional high school certificate.) Section 1(4) of this regulation was amended by deleting the effective date of September 1, 1989.

Office of Programs: Adult Education

709 KAR 1:100 (Approval of applications under Section 353 of Adult Education Act.) This regulation was amended by adding the cite of "PL 100-297" to the "Relates to" line.

709 KAR 1:110 (Approval of applications under English literacy program.) This regulation was amended by adding the cite of "PL 100-297" to the "Relates to" line. Section 2 was amended to delete the reference to 709 KAR 1:110 and replace it with a reference to 709 KAR 1:090.

Labor Cabinet: Department of Workplace Standards: Occupational Safety and Health

803 KAR 25:090 (Workers' compensation medical fee schedule.) The reference material was amended by changing some of the unit values in the medical fee schedule.

Public Protection and Regulation Cabinet: Department of Financial Institutions: Division of Securities

808 KAR 10:210 (Registration exemptions - Federal Regulation D.) This administrative regulation was amended to correct the citations of federal law by citing the U.S. Code and C.F.R. sections rather than the Public Law citation; to adopt without change federal securities laws that one must meet in order to be granted the exemption; and to correct other technical errors. It was also amended to provide the correct citation for interpretive releases and to provide the effective date for such releases.

Cabinet for Human Resources: Department for Health Services: Maternal and Child Health

902 KAR 4:040 (Special supplemental food program for women, infants and children (WIC).) This administrative regulation was amended to correct the citation of federal regulations and federal law. It was pointed out that the citations shall be to the C.F.R. and to the U.S. Code rather than to the Public Law. It was also amended to comply with the drafting requirements of KRS 13A.222. Section 10(3) was amended to delete the statement that the hearing officer need not make formal findings of fact and conclusions of law.

Department for Social Services: Community Action Agencies

905 KAR 6:010 (Standards.) This administrative regulation was amended to provide the correct citation of federal law, by U.S. Code and C.F.R. sections rather than Public Law sections; to comply with the drafting requirements of KRS 13A.222; and in Section 2(2) to delete language that adopted future revisions of federal law. It was pointed out that an agency may adopt only federal requirements as they exist at the time of adoption, and that upon amendment of the federal law or requirements the state regulation shall be amended to reflect such change.

905 KAR 6:040 (Termination of funding and hearing procedures.) This administrative regulation was amended to delete an incorrect citation to the KRS and to provide the correct citation of federal law and regulation by citing the U.S. Code and C.F.R. sections rather than the Public Law.

Department for Medicaid Services: Medicaid Services

907 KAR 1:450 (Nurse aide training criteria and registry.) Dan Walton, Kentucky Association of Health Care Facilities, spoke in favor of a proposed amendment that would permit the cabinet to contract with other entities to administer the nurse aid competency examinations. Chairman O'Brien pointed out that if the cabinet approved and if it would be more efficient, the amendment would be proper. However, if the only objection were to the number of those who had failed a proper test of their competency, the amendment would not be proper. Agency personnel stated that the same standards would apply and that the cabinet agreed to the amendment. The Subcommittee approved the amendment.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Corrections CAbinet: Office of the Secretary

501 KAR 6:020 (Corrections policies and procedures.)

501 KAR 6:130 (Western Kentucky Farm Center.)

Justice Cabinet: Department of State Police: Candidate Selection

502 KAR 45:125 (Oath of office.) An objection had been raised to this administrative regulation concerning the time at which the oath was given. Agency personnel explained that requiring the oath upon enrollment to the training program was consistent with KRS 16.080(2) which requires the oath before the discharge of official duties. The Subcommittee had no objection to this administrative regulation.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:045 (Application for certificate filing.)

Department of Highways: Traffic

603 KAR 5:110 (Permits for moving mobile homes.) In response to a question by Representative Bruce, agency personnel explained that Section 5 would not affect farm equipment.

Education and Humanities Cabinet: Department of Education: Office of Local Services: Pupil Transportation

702 KAR 5:030 (Superintendents' responsibilities.)

702 KAR 5:080 (Bus drivers' qualifications; responsibilities.)

Office of Instruction: Instructional Services

704 KAR 3:291 (Repeal of 704 KAR 3:290.)

704 KAR 3:292 (Chapter I, ESSIA migrant education requirements.)

704 KAR 3:365 (Chapter I complaint procedures.)

Elementary and Secondary Education Act

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

Teacher Certification

704 KAR 20:005 (Kentucky standards for preparation-certification of professional school personnel program approval.)

704 KAR 20:135 (Kindergarten teachers.)

704 KAR 20:290 (Certification for early elementary level.)

Office of Vocational Education: Management of State-Operated Schools

705 KAR 5:130 (Attendance policies for long-term adults in state-operated vocational schools.)

Office of Programs: Adult Education

709 KAR 1:051 (Repeal of 709 KAR 1:050.)

709 KAR 1:060 (Standard for academic progress for postsecondary and adult students.)
709 KAR 1:080 (Community education.)
709 KAR 1:090 (Approval of applications under Section 322 of Adult Education Act.)
709 KAR 1:120 (Approval of applications under workplace literacy program.)
709 KAR 1:130 (Approval of applications for migrant farmworker and immigrant education.)
709 KAR 1:140 (Reporting requirements for adult education programs.)

Labor Cabinet: Department of Workplace Standards: Occupational Safety and Health
803 KAR 2:020 (Adoption of 29 CFR Part 1910.)

Cabinet for Human Resources: Department for Employment Services: Unemployment Insurance
903 KAR 5:270 (Maximum weekly benefit rates.)
Department for Social Insurance: Public Assistance
904 KAR 2:006 (Technical requirements; AFDC.)
904 KAR 2:035 (Right to apply and reapply.)
904 KAR 2:040 (Procedures for determining initial and continuing eligibility.)
904 KAR 2:046 (Adverse action; conditions.)
904 KAR 2:060 (Delegation of power for oaths and affirmations.)
Food Stamp Program
904 KAR 3:080 (Contingency plan.)
Department for Social Services: Community Action Agencies
905 KAR 6:050 (CSBG program state plan.)
905 KAR 6:060 (CSBG audit specifications.)
Department for Medicaid Services: Medicaid Services
907 KAR 1:004 (Resource and income standard of medically needy.)
907 KAR 1:012 (Inpatient hospital services.)
907 KAR 1:022 (Skilled nursing facility services.)
907 KAR 1:026 (Dental services.)
907 KAR 1:027 (Payments for dental services.)
907 KAR 1:031 (Payments for home health services.)
907 KAR 1:045 (Payments for mental health center services.)
907 KAR 1:055 (Payments for primary care center services.)
907 KAR 1:402 (Incorporation by reference of the physician services manual.)
907 KAR 1:416 (Incorporation by reference of the pharmacy services manual.)
907 KAR 1:474 (Incorporation by reference of the durable medical equipment manual.)

The Subcommittee deferred the following regulation at the request of the promulgating administrative body:

Education and Humanities Cabinet: Department of Education: Office of Instruction: Teacher Certification
704 KAR 20:550 (Professional school certificate for college faculty.)
Office of Education for Exceptional Children: Exceptional and Handicapped Programs
707 KAR 1:051 (Exceptional children's programs.)

Labor Cabinet: Department of Workers' Claims: Workers' Compensation Board
803 KAR 25:100 (Procedures for workers' compensation rehabilitation.) This regulation was deferred to give adequate time for review of the proposed amendment.

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 10:45 a.m. until October 4, 1989 at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of August 16, 1989

The Interim Joint Committee on Health and Welfare met on Wednesday, August 16, 1989, and submits this report.

The Committee determined that the following regulations complied with KRS Chapter 13A:
905 KAR 2:070
907 KAR 1:054
907 KAR 1:432

INTERIM JOINT COMMITTEE ON CITIES
Meeting of August 22, 1989

The Interim Joint Committee on Cities met on August 22, 1989, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A and other statutory authority. The Committee approved all without objection:

Finance and Administration Cabinet
200 KAR 17:010 and E (Guidelines for the Kentucky Infrastructure Authority Revolving Loan Fund)

Department of Housing, Buildings & Construction: Boilers and Pressure Vessels
815 KAR 15:010 (Definitions)
815 KAR 15:020 (Administrative procedures; requirements)
815 KAR 15:030 (General requirements)
815 KAR 15:040 (Power boiler requirements)
Department of Housing, Buildings & Construction: Plumbing
815 KAR 20:090 (Soil, waste and vent systems)
Department of Housing, Buildings & Construction: Mobile Homes and Recreational Vehicles
815 KAR 25:010 (Mobile homes)

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of August 23, 1989

The Interim Joint Committee on Agriculture and Natural Resources met Wednesday, August 23, 1989, and submits this report:

The committee determined that administrative regulation 301 KAR 1:130, Department of Fish and Wildlife Resources, complies with KRS Chapter 13A.

The committee adjourned at 1:25 p.m., August 23, 1989.

CUMULATIVE SUPPLEMENT

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LOCATOR INDEX -- EFFECTIVE DATES

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

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501 KAR 6:020E	532	8-21-89
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502 KAR 45:010E	119	6-28-89
502 KAR 45:125E	119	6-28-89
702 KAR 5:010E	334	7-17-89
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