Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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IN THIS ISSUE:

REPLACEMENT PAGE FOR NOVEMBER REGISTER

Administrative Regulation Review Subcommittee, Dec. Agenda.....1118
Regulation Review Procedure.....1121

Emergency Regulations Now In Effect:
Department of Personnel.....1122
Board of Landscape Architects.....1131
Fish and Wildlife Resources.....1134
Human Resources.....1139

As Amended:
Finance and Administration Cabinet.....1157
Board of Engineers and Land Surveyors.....1157
Natural Resources & Environmental Protection - Waste Management....1159
Natural Resources & Environmental Protection - Surface Mining.....1170
Education.....1182
Financial Institutions - Securities.....1185
Human Resources.....1185

Amended After Hearing:
Natural Resources & Environmental Protection - Water.....1191
Natural Resources & Environmental Protection - Waste Management....1198
Natural Resources & Environmental Protection - Surface Mining.....1202
Transportation.....1206

Proposed Amendments Received through November 15:
Department of Personnel.....1208
Board of Medical Licensure.....1223
Board of Landscape Architects.....1234
Board of Engineers and Land Surveyors.....1237
Corrections.....1238
Transportation.....1242
Education.....1248
Housing, Buildings and Construction.....1267
Human Resources.....1278

Proposed Regulations Received Through November 15:
Department of Personnel.....1287
Education.....1287
Morehead State University.....1288
Housing, Buildings and Construction.....1295

Nov. Minutes of the Administrative Regulation Review Subcommittee.....1314
Other Committee Reports.....1317

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates.....F2
KRS Index.....F8
Subject Index.....F14

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 December 11 & 12, 1989. See **tentative** agenda on pages 1118-1121 in this Administrative Register.

THE PAGE ON THE BACK OF THIS SHEET

IS TO BE PLACED IN THE NOVEMBER REGISTER AS PAGE 818

(Page 819 was inadvertently printed twice

and Page 818 was not printed)

Big South Fork Cumberland River	River Mile 55.2 to River Mile 45.0	McCreary[/ Wayne]	WAH, PCR, SCR, ORW
Breeden's Creek	Basin	Harlan	CAH, PCR, SCR
Brownies Creek	Basin to River Mile 8.7	Harlan	WAH, PCR, SCR, ORW
Buck Creek	River Mile 53.3 [47.7] to River Mile 10.5	Pulaski	WAH, PCR, SCR, ORW
Buck Creek	Basin	Whitley	WAH, PCR, SCR, ORW
Bucks Branch	Basin	Whitley	WAH, PCR, SCR, ORW
Buffalo Creek	Basin to Kentucky/Tennessee State Line (River Mile 3.2)	Whitley	WAH, PCR, SCR, ORW
Bunches Creek	Basin	Whitley	CAH, PCR, SCR, ORW
Cane Creek	Basin	Laurel	CAH, PCR, SCR
Caney Creek	Basin	Bell	WAH, PCR, SCR, ORW
Cogur Fork	Basin	McCreary	CAH, PCR, SCR
Cumberland River	River Mile 694.2 to River Mile 574.6	Whitley	WAH, PCR, SCR, DWS
Cumberland River	River Mile 574.6 to River Mile 558.5 (Headwaters of Lake Cumberland)	McCreary/ Whitley	WAH, PCR, SCR, ORW
Cumberland River	Lake Cumberland [River] Dam (River mile 460.9) to Highway 90 bridge (River Mile 426.5)	[Russell/] Cumberland	CAH, PCR, SCR, DWS
Cumberland River	River Mile 426.5 to Kentucky/Tennessee State Line (River mile 401.05)	Monroe	WAH, PCR, SCR, DWS
Davis Branch	Basin	Bell	WAH, PCR, SCR, ORW
Difficulty Creek	Basin	McCreary	CAH, PCR, SCR
Dogslaughter Creek	Basin	Whitley	CAH, PCR, SCR, ORW
Eagle Creek	Basin	McCreary	WAH, PCR, SCR, ORW
Fugitt Creek	Basin	Harlan	CAH, PCR, SCR
Horse Lick Creek	River Mile 12.3 to River Mile 0.0	Jackson/ Rockcastle	WAH, PCR, SCR, ORW
Indian Creek	Source to Barren Fork	McCreary	CAH, PCR, SCR
Kelly Branch	Basin	Harlan	CAH, PCR, SCR
Kennedy Creek	River Mile 1.0 to River Mile 0.0	Wayne	WAH, PCR, SCR, ORW
Laurel Creek	River Mile 9.0 to River Mile 3.4	McCreary	CAH, PCR, SCR
Little Clear Creek	Basin from Confluence with Fuson Branch	Bell	WAH, PCR, SCR, ORW
Little South Fork Cumberland River	River Mile 35.6 to River Mile 4.1	Wayne	WAH, PCR, SCR, ORW
Little Yellow Creek	Fern Lake Dam to River Mile 0.0	Bell	WAH, PCR, SCR, ORW

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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
December 11, 1989
(Rm. 107, Capitol Annex @ 1 p.m.)

LEGISLATIVE RESEARCH COMMISSION

Block Grants

1 KAR 4:005. Legislative oversight procedures applicable to federal block grants administered by state agencies.

DEPARTMENT OF PERSONNEL

Personnel Department; Classified

101 KAR 2:006. Repeal of previous regulations. (Repeals 101 KAR 2:010; 101 KAR 2:080; 101 KAR 2:110; 101 KAR 2:130)(Not Amended After Hearing)(Deferred from November Meeting)
101 KAR 2:020. Classification plan. (Not Amended After Hearing)(Deferred from November Meeting)
101 KAR 2:030. Compensation plan. (Not Amended After Hearing)(Deferred from November Meeting)
101 KAR 2:040. Applications and examinations. (Not Amended After Hearing) (Deferred from November Meeting)
101 KAR 2:050. Registers. (Not Amended After Hearing)(Deferred from November Meeting)
101 KAR 2:060. Certification and selection of eligibles. (Not Amended After Hearing) (Deferred from November Meeting)
101 KAR 2:070. Types of appointments and detail to special duty. (Not Amended After Hearing) (Deferred from November Meeting)
101 KAR 2:090. Service regulations. (Not Amended After Hearing)(Deferred from November Meeting)

GENERAL GOVERNMENT CABINET

Board of Pharmacy

201 KAR 2:010. Schools approved by the board.
201 KAR 2:015. Continuing education.
201 KAR 2:020. Examinations.
201 KAR 2:030. Reciprocity; temporary license.
201 KAR 2:040. Registration of interns.
201 KAR 2:080. Prescription substitution.
201 KAR 2:165. Transfer of prescription information.
201 KAR 2:175. Emergency/72 hour prescription refills.
201 KAR 2:190. Return of prescription drugs prohibited.

TOURISM CABINET
Department of Fish and Wildlife Resources

Fish

301 KAR 1:200. Seasons and limits for angling.

Game

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

Hunting and Fishing

301 KAR 3:080. Prohibition of lead shot for waterfowl and dove hunting.

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

Water Quality

401 KAR 5:005. Permits to discharge sewage; industrial and other wastes; definitions. (Amended After Hearing)
401 KAR 5:010. Certification of wastewater system operators. (Amended After Hearing)
401 KAR 5:026. Classification of waters.
401 KAR 5:029. General provisions.
401 KAR 5:031. Surface water standards.
401 KAR 5:085. KPDES discharge permit and variance fees. (Amended After Hearing)

Sanitary Engineering

401 KAR 6:300. Water well drillers certification; examination; fees. (Not Amended After Hearing)

Division of Waste Management

Hazardous Waste Fees

401 KAR 39:010. Generator registration fees. (Not Amended After Hearing)
401 KAR 39:020. Delisting and exemption fees. (Amended After Hearing)
401 KAR 39:030. Part B treatment, storage, or disposal facility fees. (Amended After Hearing)
401 KAR 39:060. Short-term fees. (Amended After Hearing)
401 KAR 39:070. Modification fees. (Amended After Hearing)
401 KAR 39:080. Recycling fees. (Not Amended After Hearing)
401 KAR 39:090. Postclosure fees. (Amended After Hearing)
401 KAR 39:110. Marketer and burner registration fees. (Not Amended After Hearing)
401 KAR 39:120. Part A application fee. (Amended After Hearing)

Division for Air Quality

General Administrative Procedures
401 KAR 50:036. Permit and exemption fees. (Not Amended After Hearing)

Department for Surface Mining Reclamation and Enforcement

Bond and Insurance Requirements
405 KAR 10:200 & E. Kentucky bond pool. (Amended After Hearing)

CORRECTIONS CABINET

Office of the Secretary
501 KAR 6:030. Kentucky State Reformatory.
501 KAR 6:120. Blackburn Correctional Complex.

TRANSPORTATION CABINET

Office of Minority Affairs
600 KAR 4:020. The disadvantaged, minority and Women Business Enterprise Program.

Department of Vehicle Regulation

Division of Motor Carriers
601 KAR 1:025. Transporting hazardous materials; permit. (Amended After Hearing)

Driver's License
601 KAR 12:040. Driving history record; fee.

Office of Aeronautics

Airport Safety Standards
602 KAR 20:100. Public use heliport.

Department of Highways

Traffic
603 KAR 5:050. Uniform traffic control devices.
603 KAR 5:070. Truck dimension limits.

EDUCATION AND HUMANITIES CABINET
State Board for Elementary and Secondary Education
Department of Education
Office of Vocational Rehabilitation

Administration
706 KAR 1:060. General provisions for operation of the Office of Vocational Rehabilitation. (Repeals 706 KAR 1:010)
706 KAR 1:070. Order of selection and economic need test for vocational rehabilitation services.
706 KAR 1:080. Rehabilitation engineering services.
706 KAR 1:090. Carl D. Perkins Comprehensive Rehabilitation Center.
706 KAR 1:100. Admission and discharge from Colonial Inn Rehabilitation Facility, work training centers and community facilities.
706 KAR 1:110. Office of Vocational Rehabilitation appeal procedures. (Repeals 706 KAR 1:050)

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA
December 12, 1989
(Rm. 107, Capitol Annex @ 10 a.m.)

LABOR CABINET
Department of Workplace Standards

Occupational Safety and Health
803 KAR 2:031. Repeal of existing regulations. (Repeals 803 KAR 2:020; 803 KAR 2:027; 803 KAR 2:030; 803 KAR 2:032)
803 KAR 2:300. Adoption of 29 CFR Part 1910. (Repeals 803 KAR 2:020) (Deferred from November meeting)
803 KAR 2:301. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:302. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:303. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:304. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:305. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:306. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:307. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:308. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:309. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:310. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:311. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:312. Adoption of 29 CFR Part 1910.166-.171.
803 KAR 2:313. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:314. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:315. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:316. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:317. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:318. Adoption of 29 CFR Part 1910. (Deferred from November meeting)

803 KAR 2:319. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:320. Adoption of 29 CFR Part 1910. (Deferred from November meeting)
803 KAR 2:400. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:401. Adoption of 29 CFR Part 1926.10-.20.
803 KAR 2:402. Adoption of 29 CFR Part 1926.20-.32.
803 KAR 2:403. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:404. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:405. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:406. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:407. Adoption of 29 CFR Part 1926.250-.252.
803 KAR 2:408. Adoption of 29 CFR Part 1926.300-.305.
803 KAR 2:409. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:410. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:411. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:412. Adoption of 29 CFR Part 1926.500-.502.
803 KAR 2:413. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:414. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:415. Adoption of 29 CFR Part 1926.650-.653.
803 KAR 2:416. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:417. Adoption of 29 CFR Part 1926.750-.752.
803 KAR 2:418. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:419. Adoption of 29 CFR Part 1926.850-.860.
803 KAR 2:420. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:421. Adoption of 29 CFR Part 1926. (Deferred from November meeting)
803 KAR 2:422. Adoption of 29 CFR Part 1926.1000-.1003.
803 KAR 2:423. Adoption of 29 CFR Part 1926.1050-.1051.
803 KAR 2:500. Adoption of 29 CFR Parts 1915, 1917, 1918 and 1919, maritime employment. (Deferred from November meeting)
803 KAR 2:600. Adoption of 29 CFR Part 1928. (Deferred from November meeting)

PUBLIC PROTECTION AND REGULATION CABINET
State Racing Commission

Thoroughbred Racing Rules
810 KAR 1:003. Licensing.
810 KAR 1:020. Hearings, reviews and appeals.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement

Kentucky Building Code
815 KAR 7:010. Administration and enforcement.
815 KAR 7:020. Building Code.
815 KAR 7:060. Facilities for the physically disabled in new construction.

Plumbing
815 KAR 20:020. Parts or materials list.
815 KAR 20:120. Water supply and distribution.
815 KAR 20:130. House sewers and storm water piping; methods of installation.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

Long Term Care
900 KAR 2:010. Access and hours of visitation.
900 KAR 2:020. Appeals.
900 KAR 2:030. Quality of care rating system for long term care facilities.
900 KAR 2:040. Citations and violations; criteria and specific acts.

Office of Administrative Services

Vital Statistics
901 KAR 5:031. Definitions: live birth, fetal death, induced termination of pregnancy and reportable events.
901 KAR 5:040. Verification of birth and death facts.
901 KAR 5:070. Certificate of birth amended.
901 KAR 5:080. Delayed registration of deaths.
901 KAR 5:090. Burial, transportation and disinterment of dead bodies.
901 KAR 5:100. Cadavers.

Department for Health Services

Public Accommodations
902 KAR 7:010. Hotel and motel code.

Health Services and Facilities
902 KAR 20:009. Facility specifications; hospitals.
902 KAR 20:012. Hospital examination services.
902 KAR 20:021. Facility specifications; skilled nursing.
902 KAR 20:031. Facility specifications; personal care homes.
902 KAR 20:046. Facility specifications; nursing home.
902 KAR 20:054. Health maintenance organizations operations and services.

902 KAR 20:056. Facility specifications; intermediate care.
902 KAR 20:058. Operation and services; primary care center.
902 KAR 20:072. Operation and services; ambulatory care clinics.
902 KAR 20:078. Operations and services group homes.
902 KAR 20:081. Operations and services; home health agencies.
902 KAR 20:091. Facilities specifications, operation and services community mental health-mental retardation center.
902 KAR 20:101. Facility specifications; ambulatory surgical center.
902 KAR 20:145. Operations and services rural health clinics.
902 KAR 20:150. Alternative birth centers.
902 KAR 20:155. Air ambulance services.
902 KAR 20:170. Facility specifications; psychiatric hospitals.
902 KAR 20:180. Psychiatric hospitals operation and services.
902 KAR 20:190. Rehabilitation agency services.

Food and Cosmetics
902 KAR 45:010. Definitions.

Department for Social Insurance

Public Assistance
904 KAR 2:016 & E. Standards for need and amount; AFDC.
904 KAR 2:025 & E. Kentucky child support guidelines.
904 KAR 2:055 & E. Hearings and appeals.
904 KAR 2:116 & E. Low income home energy assistance program.

Department for Social Services

Child Welfare
905 KAR 1:005. Operation of child placing agencies.
905 KAR 1:065. Operations of child care institutions.
905 KAR 1:071. Group homes for foster children.
905 KAR 1:110. Treatment-oriented child care.
905 KAR 1:120. Treatment of adjudicated delinquents.
905 KAR 1:140. Foster care, adoption assistance. (Repeals 905 KAR 1:040; 905 KAR 1:085; 905 KAR 1:100)

Department for Medicaid Services

Medicaid Services
907 KAR 1:004 & E. Resource and income standard of medically needy.
907 KAR 1:012 & E. Inpatient hospital services.

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
101 KAR 2:100E

This emergency regulation is an amendment to the administrative regulation governing sick leave and is necessary to prevent the economic and social harm that may affect state employees and their families when the employee is faced with a medical emergency and lacks sufficient accumulated leave to maintain income and medical insurance during the period of absence from work. Under current regulations, there is no mechanism which would permit employees to donate leave to a fellow employee faced with economic disruption due to a legitimate medical emergency. The Department of Personnel has received evidence that there are a number of state employees who, through no fault of their own, have virtually exhausted their leave balances and face prolonged hospitalization for treatment of a medical emergency. This emergency amendment to the leave regulation is necessary to permit employees to donate sick leave to fellow employees who would otherwise be cut off from income during a medical crisis. This emergency regulation shall be replaced by an ordinary administrative regulation amendment to 101 KAR 2:100. The ordinary regulation was filed with the Regulations Compiler on November 13, 1989.

WALLACE G. WILKINSON, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:100E. Leave regulations.

RELATES TO: KRS 18A.030, 18A.110
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110
EFFECTIVE: November 13, 1989
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 paragraph (2) of this 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.

(15) An employee may donate or receive sick leave donation under the following conditions:

(a) An employee with a sick leave balance in excess of seventy-five (75) hours may donate any or all such excess to an employee with a documented medical emergency who has exhausted all annual leave, sick leave, and compensatory leave.

1. Such voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the commissioner and shall include:

a. The name of the donor.

b. The agency in which the donor is employed.

c. The position number of the donor.

d. The Social Security number of the donor.

e. The name of the employee to which leave is being donated.

f. The agency in which the donee is employed.
g. The donee position number.
h. The donee Social Security number.
i. The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.
j. Certification by the donor that such donation is given without expectation or promise for any purpose other than that authorized by this regulation.

2. The donating employee must retain a sick leave balance of not less than seventy-five (75) hours.

3. A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in any manner other than that authorized by this regulation.

(b) A full-time, or part-time, status employee with a medical emergency who has exhausted all annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made in behalf of the employee by a personal representative of the employee in the event of the employee's incapacity to make application on his own behalf.

1. Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:
a. Employee name.
b. Position number.
c. Social Security number.
d. Employee title.
e. The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.
f. Signature of the requestor or his personal representative.

2. The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of his position for ten (10) or more consecutive working days.

(c) The appointing authority of the applicant to receive donated sick leave may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(d) At the end of each pay period while an employee is on donated leave, the employee's appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay, and shall notify the donor's appointing authority to reduce the donor's leave balance by that amount.

(e) No employee on donated sick leave shall be credited with leave in an amount in excess of the time of the documented medical emergency.

(f) No person shall through his office of employment use any promise, exchange, or influence to require an employee to donate excess sick leave to any other employee.

(g) For purposes of this regulation medical emergency shall mean an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty for ten (10) or more consecutive working days.

(h) A part-time employee with status may qualify for donated leave only to the extent of hours for which he would normally be scheduled to work.

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.

WALLACE G. WILKINSON, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: November 13, 1989
FILED WITH LRC: November 13, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
101 KAR 3:010E

This emergency regulation is an amendment to the administrative regulation governing sick leave and is necessary to prevent the economic and social harm that may affect state employees and their families when the employee is faced with a medical emergency and lacks sufficient accumulated leave to maintain income and medical insurance during the period of absence from work. Under current regulations, there is no mechanism which would permit employees to donate leave to a fellow employee faced with economic disruption due to a legitimate medical emergency. The Department of Personnel has received evidence that there are a number of state employees who, through no fault of their own, have virtually exhausted their leave balances and face prolonged hospitalization for treatment of a medical emergency. This emergency amendment to the leave regulation is necessary

to permit employees to donate sick leave to fellow employees who would otherwise be cut off from income during a medical crisis. This emergency regulation shall be replaced by an ordinary administrative regulation amendment to 101 KAR 3:010. The ordinary regulation was filed with the Regulations Compiler on November 13, 1989.

WALLACE G. WILKINSON, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

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

RELATES TO: KRS 18A.155
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.155
EFFECTIVE: November 13, 1989
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for the unclassified service persons in positions enumerated in KRS 18A.155(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. In practice, the leave regulations (101 KAR 2:100) which apply to merit system employees in the following specific areas have also been applied to the aforementioned categories of employees in the unclassified service.

Section 1. Annual leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, or 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. 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 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 (1) 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 for more than half of the workdays in a month, except:

(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work related injury covered by workers compensation.

(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the

prolonged incapacity or illness.

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

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

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

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

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

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

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

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

(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work related injury covered by workers compensation.

(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.

(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 in excess of thirty (30) working days. 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.

(15) An employee may donate or receive sick leave donation under the following conditions:

(a) An employee with a sick leave balance in excess of seventy-five (75) hours may donate any or all such excess to an employee with a documented medical emergency who has exhausted all annual leave, sick leave, and compensatory leave.

1. Such voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the commissioner and shall include:

a. The name of the donor.

b. The agency in which the donor is employed.

c. The position number of the donor.

d. The Social Security number of the donor.

e. The name of the employee to which leave is being donated.

f. The agency in which the donee is employed.

g. The donee position number.

h. The donee Social Security number.

i. The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.

j. Certification by the donor that such donation is given without expectation or promise for any purpose other than that authorized by this regulation.

2. The donating employee must retain a sick leave balance of not less than seventy-five (75) hours.

3. A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in any manner other than that authorized by this regulation.

(b) A full-time, or part-time, status employee with a medical emergency who has exhausted all annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made in behalf of the employee by a personal representative of the employee in the event of the employee's incapacity to make application on his own behalf.

1. Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:

a. Employee name.

b. Position number.

c. Social Security number.

d. Employee title.

e. The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.

f. Signature of the requestor or his personal representative.

2. The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of his position for ten (10) or more consecutive working days.

(c) The appointing authority of the applicant to receive donated sick leave may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(d) At the end of each pay period while an employee is on donated leave, the employee's appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay, and shall notify the donor's appointing authority to reduce the donor's leave balance by that amount.

(e) No employee on donated sick leave shall be credited with leave in an amount in excess of the time of the documented medical emergency.

(f) No person shall through his office of employment use any promise, exchange, or influence to require an employee to donate excess sick leave to any other employee.

(g) For purposes of this regulation medical emergency shall mean an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty for ten (10) or more consecutive working days.

(h) A part-time employee with status may qualify for donated leave only to the extent of hours for which he would normally be scheduled to work.

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 and Overtime. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of this section and 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 employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off if the use of such time does not unduly disrupt the operations of the agency. 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 at one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(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)(a) 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.

(b) An employee in a policy making position shall be paid for all accrued compensatory leave, not to exceed 200 hours, only upon termination from the unclassified service. An employee who reverts to a position in the classified service or an employee who resigns one day and is employed the next day shall retain his accrued compensatory 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 his compensatory leave at the higher rate].

(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, or for other purposes that are deemed to be in the best interests of 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.

(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 for more than half of the workdays in a month, except:

(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work related injury covered by workers compensation.

(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.

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.

WALLACE G. WILKINSON, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: November 13, 1989
FILED WITH LRC: November 13, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
201 KAR 10:010E

Comes the Kentucky State Board of Examiners and Registration of Landscape Architects (hereinafter the board) pursuant to KRS 13A.190 and makes the following statement of explanation in support of the attached emergency regulation.

1. Because older sections of these regulations are not in compliance with recent amendments to KRS Chapter 13A, amendment of these regulations is necessary to attain compliance. The Business Organizations and Professions Committee of the General Assembly meets October 12, 1989 and will not meet again until November or December. Because of this schedule, the board has been warned that unless the amendments are in existence by October 12, 1989, the entire body of regulations for this board may be at risk of nonenactment.

2. In the absence of these emergency regulations the board would find it impossible to meet this legislatively-imposed deadline of October 12, 1989.

3. These emergency regulations will be replaced by ordinary administrative regulations.

WALLACE G. WILKINSON, Governor
JOHN L. CARMAN, President

GENERAL GOVERNMENT CABINET
Board of Examiners and Registration of Landscape Architects

201 KAR 10:010E. Duties of board.

RELATES TO: KRS 323A.210
STATUTORY AUTHORITY: KRS 323A.210
EFFECTIVE: October 31, 1989
NECESSITY AND FUNCTION: KRS 323A.210 requires the board to keep complete and accurate records and this regulation is fashioned to require the board secretary to be responsible for accurate and complete records of all board transactions, with a board appointed executive director to be responsible for administrative functioning of the board.

Section 1. Duties of the Board. (1) The board secretary shall [will] be responsible for accurate and complete records of all transactions of the board.

(2) The board shall [will] appoint an executive director who will be responsible for the administrative functioning of the board.

(3) The executive director shall forward a copy of the [rules and] regulations and a copy of the Act along with all applications to the applicants.

JOHN L. CARMAN, President
APPROVED BY AGENCY: October 25, 1989
FILED WITH LRC: October 31, 1989 at 3 p.m.

STATEMENT OF EMERGENCY
201 KAR 10:030E

Comes the Kentucky State Board of Examiners and Registration of Landscape Architects (hereinafter the board) pursuant to KRS 13A.190 and makes the following statement of explanation in support of the attached emergency regulation.

1. Because older sections of these regulations are not in compliance with recent amendments to KRS Chapter 13A, amendment of these regulations is necessary to attain compliancae. The Business Organizations and Professions Committee of the General Assembly meets October 12, 1989 and will not meet again until November or December. Because of this schedule, the board has been warned that unless the amendments are in existence by October 12, 1989, the entire body of regulations for this board may be at risk of nonenactment.

2. In the absence of these emergency regulations the board would find it impossible to meet this legislatively-imposed deadline of October 12, 1989.

3. These emergency regulations will be replaced by ordinary administrative regulations.

WALLACE G. WILKINSON, Governor
JOHN L. CARMAN, President

GENERAL GOVERNMENT CABINET
Board of Examiners and Registration of Landscape Architects

201 KAR 10:030E. Code of ethics.

RELATES TO: KRS 323A.010, 323A.020, 323A.040, 323A.080, 323A.100, 323A.110, 323A.120, 323A.210
STATUTORY AUTHORITY: KRS 323A.210
EFFECTIVE: October 31, 1989
NECESSITY AND FUNCTION: KRS 323A.210 authorizes the board to adopt reasonable regulations not inconsistent with the act but which are necessary to carry into effect the purposes of the act. This code of ethics is intended to establish guidelines for the landscape architects practicing in the state and for the protection of the public they will be serving.

Section 1. Code of Ethics. (1) This code of professional ethics is hereby promulgated by the board as guidelines for the profession of landscape architecture in Kentucky. A violation of the duties and obligations herein set out shall be considered unprofessional conduct.

(2) The landscape architect shall conduct his practice in order to protect the life, health, property and welfare of the public and shall at all times recognize that his primary obligation is to protect the life, health, property and welfare of the public in the performance of his professional duties. If his landscape architectural judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, he shall inform his employer of the possible consequences and notify such other proper authority of the situation, as may be appropriate.

(3) The landscape architect shall perform his services only in areas of his competence.

(a) The landscape architect shall undertake to perform landscape architectural assignments only when qualified by education or experience in the specific technical field of professional landscape architecture involved.

(b) The landscape architect may accept an assignment requiring education or experience outside of his own field of competence, but only to the extent that his services are restricted to those phases of the project in which he is qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees.

(c) The landscape architect shall not affix his signature and/or seal to any landscape architectural plan or document dealing with subject matter to which he lacks competence by virtue of education or experience, nor to any such plan or document not prepared under his direct supervisory control.

(d) In the event a question arises as to the competence of a landscape architect to perform a landscape architectural assignment in specific technical field of landscape architecture which cannot be otherwise resolved to the board's satisfaction, the board, either upon request of the landscape architect or by its own volition, may require him to submit to an appropriate examination as determined by the board.

(4) The landscape architect shall issue public statements only in an objective and truthful manner.

(a) The landscape architect shall be completely objective and truthful in all professional reports, statements or testimony. He shall include all relevant and pertinent information in such reports, statements, or testimony.

(b) The landscape architect, when serving as an expert or technical witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his testimony.

(c) The landscape architect <u>shall</u> [will] issue no statements, criticisms, or arguments on landscape architectural matters connected with public policy which are inspired or paid for by an interested party, or parties, unless he has prefaced his comment by explicitly identifying himself, by disclosing the identities of the party or parties on whose behalf he is speaking, and by revealing the existence of any pecuniary interest he may have in the instant matters.

(5) The landscape architect shall avoid conflicts of interest.

(a) The landscape architect shall avoid all conflicts of interest with his employer or client and shall promptly inform his employer or client of any business association, interests, or circumstances which could influence his judgment or the quality of his services.

(b) The landscape architect shall not accept compensation, financial or otherwise, from more than one (1) party for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

(c) The landscape architect shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.

(d) The landscape architect shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with his client or employer in connection with work for which he is responsible.

(e) When in public service as a member, advisor, or employee of a governmental body or department, the landscape architect shall not participate in considerations or actions with respect to services provided by him or his organization in private landscape architectural practices.

(f) The landscape architect shall not solicit or accept a landscape architectural contract from a governmental body on which a principal or officer of his organization serves as a member.

(g) The landscape architect shall not attempt to supplant another landscape architect after definite steps have been taken by a client toward the latter's employment; nor shall he undertake a commission for which another landscape architect has been employed without first conclusively determining that the latter's employment has been terminated.

(6) The landscape architect shall solicit or

accept work only on the basis of his qualifications.

[(a) The landscape architect shall not engage in commercial advertising.]

(a) [(b)] The landscape architect shall not offer to pay, either directly or indirectly, any commission, political contribution, or a gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.

(b) [(c)] The landscape architect shall seek professional employment on the basis of qualification and competence for proper accomplishment of the work.

(c) [(d)] The landscape architect shall not falsify or permit misrepresentation of his, or his associates', academic or professional qualifications. He shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work.

(7) The landscape architect shall associate only with reputable persons or organizations.

(a) The landscape architect shall not knowingly associate with or permit the use of his name or firm in a business venture by any person or firm which he knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature, or in violation of these [rules and] regulations.

(b) If the landscape architect has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or KRS Chapter 323A, he shall present such information to the board in writing and shall cooperate with the board in furnishing such further information or assistance as may be required by the board.

[(8) Conviction of a felony involving moral turpitude, a finding of mental incompetency by a court of competent jurisdiction, or the revocation or suspension of a professional landscape architect's license by another jurisdiction if for a cause which in the Commonwealth of Kentucky would constitute a violation of the law or of these rules, shall be grounds for a charge of violation of these rules.]

JOHN L. CARMAN, President
APPROVED BY AGENCY: October 25, 1989
FILED WITH LRC: October 31, 1989 at 3 p.m.

STATEMENT OF EMERGENCY
201 KAR 10:040E

Comes the Kentucky State Board of Examiners and Registration of Landscape Architects (hereinafter the board) pursuant to KRS 13A.190 and makes the following statement of explanation in support of the attached emergency regulation.

1. Because older sections of these regulations are not in compliance with recent amendments to KRS Chapter 13A, amendment of these regulations is necessary to attain compliance. The Business Organizations and Professions Committee of the General Assembly meets October 12, 1989 and will not meet again until November or December. Because of this schedule, the board has been warned that unless the amendments are in existence by October 12, 1989, the entire body of regulations for this board may be at risk of nonenactment.

2. In the absence of these emergency regulations the board would find it impossible to meet this legislatively-imposed deadline of October 12, 1989.

3. These emergency regulations will be replaced by ordinary administrative regulations.

WALLACE G. WILKINSON, Governor
JOHN L. CARMAN, President

GENERAL GOVERNMENT CABINET
Board of Examiners and Registration
of Landscape Architects

201 KAR 10:040E. Applications.

RELATES TO: KRS 323A.040, 323A.050, 323A.060, 323A.070
STATUTORY AUTHORITY: KRS 323A.210
EFFECTIVE: October 31, 1989
NECESSITY AND FUNCTION: KRS 323A.210 authorizes the board to adopt all reasonable regulations and this regulation is intended to establish procedures for the filing and processing of applications for registration as landscape architects in this state.

Section 1. Applications. (1) Applications for registration as a landscape architect may [will] be received at any time during regular business hours at the office of the board. But applications for written examinations shall be filed with the prescribed fee in such office at least six (6) weeks prior to the opening date of the examinations.

(2) All fees payable by applicants shall accompany the applications.

(3) The board reserves the right to request additional information, including a personal appearance, from each applicant together with any necessary documentary evidence in cases where questions concerning qualifications may arise. Personal appearances before the board shall be at a time and place designated by the board.

(4) The board reserves the right to retain any and all documents submitted as evidence of qualifications for registration. Photostatic copies of original documents may be submitted if notarized as true copies.

(5) Failure to comply with a written request from the board for additional evidence or information or to appear before the board when deemed necessary within sixty (60) days of such notice may be sufficient and just cause for the disapproval of the application.

(6) Members of the board may not serve as personal references; however, they may be listed as persons who have supervised the work of the applicant.

(7) The board reserves the right to exercise the discretion provided in the act by requiring the applicants to qualify by either:

(a) Passing the regular written or written and oral examinations; or

(b) Having a satisfactory examination record from another state, providing it is deemed equal in all respects to that given in Kentucky.

(8) All applicants who seek registration under KRS 323A.050(1) shall submit satisfactory proof

of registration in good standing in any state or states of present registration and shall indicate whether registration was obtained under a grandfather clause or by examination or other means in the particular state in which registration was granted.

(9) All applicants shall be considered individually by the board and passed or rejected by a roll call vote. The action taken by the board shall be recorded in the minutes. Approval of an applicant will require a majority vote of the board.

[(10) All applications for registration under KRS 323A.050(2) must have been received by the board no later than February 1, 1974.]

(10) [(11)] An outline of the action taken by the board shall be placed with each application.

(11) [(12)] The board reserves the right to establish or change the classification under which the applicant is claiming eligibility.

(12) [(13)] Military experience shall be acceptable to the board provided it has been spent in landscape architecture as defined in the Act.

(13) [(14)] The sales and installation of products such as landscape materials (plants and construction) shall not [cannot] be considered professional services. Any plans or sketches drawn by the same person solely for the promotion and sale of his own products shall not [cannot] be considered professional services.

JOHN L. CARMAN, President
APPROVED BY AGENCY: October 25, 1989
FILED WITH LRC: October 31, 1989 at 3 p.m.

STATEMENT OF EMERGENCY
201 KAR 10:060E

Comes the Kentucky State Board of Examiners and Registration of Landscape Architects (hereinafter the board) pursuant to KRS 13A.190 and makes the following statement of explanation in support of the attached emergency regulation.

1. Because older sections of these regulations are not in compliance with recent amendments to KRS Chapter 13A, amendment of these regulations is necessary to attain compliance. The Business Organizations and Professions Committee of the General Assembly meets October 12, 1989 and will not meet again until November or December. Because of this schedule, the board has been warned that unless the amendments are in existence by October 12, 1989, the entire body of regulations for this board may be at risk of nonenactment.

2. In the absence of these emergency regulations the board would find it impossible to meet this legislatively-imposed deadline of October 12, 1989.

3. These emergency regulations will be replaced by ordinary administrative regulations.

WALLACE G. WILKINSON, Governor
JOHN L. CARMAN, President

GENERAL GOVERNMENT CABINET
Board of Examiners and Registration of Landscape Architects

201 KAR 10:060E. Renewals.

RELATES TO: KRS 323A.020, 323A.060, 323A.100
STATUTORY AUTHORITY: KRS 323A.100, 323A.210
EFFECTIVE: October 31, 1989
NECESSITY AND FUNCTION: KRS 323A.100 requires all landscape architects desiring to continue practice to secure a renewal certificate each year and this regulation is designed to set forth the procedure and fix the fees as allowed under KRS 323A.060.

Section 1. Administration. (1) A renewal notice shall be sent to all license holders on May 1 of each year. The application for renewal shall be due on or before June 30 of each year.

(2) Failure to renew within the sixty (60) day grace period as stipulated in the law shall [will] automatically cause the license to expire.

(3) Before issuing any license or renewal, the board shall collect from the person licensed the full amount of all fees due in accordance with KRS 323A.060 or 323A.100.

JOHN L. CARMAN, President
APPROVED BY AGENCY: October 25, 1989
FILED WITH LRC: October 31, 1989 at 3 p.m.

STATEMENT OF EMERGENCY
301 KAR 2:220E

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

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

TOURISM CABINET
Department of Fish and Wildlife Resources

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

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.603, 150.630, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
EFFECTIVE: October 13, 1989
NECESSITY AND FUNCTION: This regulation pertains to the seasons and limits for the taking of specified migratory birds, to the associated permitting and harvest reporting requirements, and to restrictions in the use of blinds and pits. It is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource. The framework of this regulation falls

within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates and hunting rules.

Section 1. Definitions. (1) "Blind" means any form of concealing enclosure, including a pit or [, from which one may shoot game or observe wildlife including] an anchored, stationary, or drifting boat from which hunting occurs [waterfowl are hunted].

(2) "Permanent blind" means any blind which is in place more than twenty-four (24) hours.

(3) "Commercial waterfowl hunting area" means any area of land or water used in whole or in part for the taking of migratory waterfowl where a monetary charge is made for hunting.

(4) "Noncommercial waterfowl hunting area" means any area used in whole or in part for the taking of migratory waterfowl where no monetary charge is made.

(5) "Waterfowl" means all species of ducks, coots, mergansers and geese.

Section 2. Seasons for Gun and Archery. (1) Sora rails, Virginia rails, common moorhens, and purple gallinules: November 23 [24] through January 20.

(2) Ducks, coots and mergansers: November 23 [24] through November 26 [27] and December 13 [10] through January 7 [4].

(3) Geese.

(a) Eastern Zone: November 23 [24] through January 31, east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, East on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to U.S. 41 and then north on U.S. 41 to the Kentucky-Indiana border.

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

1. Canada Goose Season: December 2 [10] through January 31 [28], unless harvest quotas are met as described below.

a. Ballard Reporting Area. This reporting area lies within the following boundary: starting at the northwest city limits of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe. Should it be determined that the quota of 20,000 [14,200] Canada geese will be filled prior to January 31 [28], the goose hunting season shall close in the Ballard Reporting Area. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

b. Counties associated with the Ballard Reporting Area. The counties associated with the Ballard Reporting Area, those portions of Ballard (excluding Ballard Reporting Area), McCracken, Graves, Carlisle, Hickman, Fulton and Marshall counties in the Western Zone, shall remain open for seven (7) days after the closure of the Ballard Reporting Area or until January 31 [28], whichever occurs first.

c. Henderson-Union Reporting Area. This reporting area includes those portions of Henderson and Union Counties within the Western Zone. Should it be determined that the quota of 6,000 [4,500] Canada geese will be filled prior to January 31 [28], the goose hunting season shall close in the Henderson-Union Reporting Area. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

d. Counties associated with the Henderson-Union Reporting Area. The counties associated with the Henderson-Union Reporting Area, those portions of Lyon, Crittenden and Livingston counties in the Western Zone shall remain open for seven (7) days after the closure of the Henderson-Union Reporting Area or until January 31 [28], whichever occurs first.

2. Season for goose species other than Canada geese (snow and blue geese, white-fronted geese, and brant): November 23 [24] through January 31 [28], or whenever the Canada goose season closes, whichever occurs first.

Section 3. Limits for Gun and Archery. (1) Ducks. The daily bag limit is three (3) and shall include no more than two (2) mallards (no more than (1) of which shall be a female), and one (1) black duck, two (2) wood ducks, one (1) redhead, and one (1) pintail of either sex. [Pintail may be taken only during the first four (4) day segment of the season.] No canvasbacks shall be taken. The possession limit is double the daily bag.

(2) Coots. The daily bag limit is fifteen (15) and the possession limit is thirty (30).

(3) Mergansers. The daily bag limit is five (5) of which no more than one (1) shall be a hooded merganser. Possession limit is double the daily bag limit.

(4) Geese.

(a) The bag limit is five (5) with no more than two (2) Canada and two (2) white-fronted geese. During January in the Western Zone, the bag limit is five (5) with no more than three (3) Canada and two (2) white-fronted geese.

(b) The possession limit is double the daily bag limit. [ten (10), not to include more than four (4) Canada and four (4) white-fronted geese.]

(5) Sora and Virginia Rails. The bag and possession limits are twenty-five (25) singly or in the aggregate.

(6) Common Moorhens and Purple Gallinules. The bag and possession limits are fifteen (15) and thirty (30), respectively, singly or in the aggregate of the two (2) species.

Section 4. Shooting Hours. One-half (1/2) hour before sunrise to sunset for all species listed in this regulation except as specified in Section 8 of this regulation, and from one-half (1/2) hour before sunrise to 3 p.m. for waterfowl during the Canada goose season in the Ballard Reporting Area.

Section 5. Shot Size Restrictions. No lead shot larger than BB or steel shot larger than F

shall be in possession while hunting the species listed in this regulation.

Section 6. Falconry Season. October 22 [November 1] through January 31, except the season for Canada geese in Fulton County shall not open until October 26 [20]. All legal species listed in this regulation may be taken by falconry.

(1) Falconry limits. The bag and possession limits are three (3) and six (6), respectively, of any legal species listed in this regulation, singly or in the aggregate.

(2) Hunting hours for falconry. The hunting hours shall conform with the shooting hours stated in Sections 4 and 8 of this regulation.

Section 7. Wildlife Management Area Blind Regulations. The following restrictions apply to all wildlife management areas except those excluded in Section 8 of this regulation.

(1) Permanent blinds are not permitted. Decoys and temporary blinds shall be removed at the end of each hunting day.

(2) No blind shall be established less than 200 yards from any other blind or waterfowl refuge areas.

(3) No more than four (4) persons shall occupy a single blind at any one time.

(4) Designated recreation areas and access points are closed to hunting of all species listed in this regulation.

Section 8. Exceptions for Specified Wildlife Management Areas and Counties. Other sections or regulations apply unless specified below. Pit and blind restrictions described in this section and Section 11 of this regulation shall not apply to periods of the falconry season as described in Section 6 of this regulation that do not coincide with waterfowl gun hunting seasons.

(1) Ballard Wildlife Management Area, except the Miller Tract, located in Ballard County.

(a) Species and seasons.

1. Geese: December 12 through January 31 or until the Ballard Reporting Area quota is reached [28].

2. Ducks, coots and mergansers: December 13 [12] through January 7 [4].

3. No hunting is permitted on Sundays or Mondays during December, on Sundays during January or on Christmas and New Year's Day.

4. No more than three (3) persons shall occupy a single blind at the same time.

(b) General rules. Waterfowl hunters shall have no more than ten (10) shells in their possession. Any hunter under the age of eighteen (18) years shall be accompanied by an adult. Any person whose transportation to and from blinds is furnished by the department shall have his gun encased. Hunting shall be by advanced application or as otherwise authorized.

(c) Shooting hours: one-half (1/2) hour before sunrise to 12 noon.

(2) Swan Lake Wildlife Management Area located in Ballard County. The Upper Blenderman Tract, located to the north of Holloway Landing Road and marked by signs, is open to hunting of all legal species listed in this regulation.

(3) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Closed areas. Smith Bay, Energy Lake, and Long Creek Pond as indicated by signs are closed to hunting. The eastern two-thirds (2/3) of Duncan Bay on Kentucky Lake is closed to all activity November 1 through March 15, as indicated by signs and buoys. The Environmental Education Center is closed to hunting of all species listed in this regulation.

(b) LBL permit. An annual LBL hunting permit is required for hunting of all legal species listed in this regulation on all shoreline areas along Kentucky and Barkley Lakes from the water's edge to twenty-five (25) yards above elevation 359' and inland areas. Waterfowl [and coot] hunting from shoreline areas along Lake Barkley is allowed according to subsection (4) of this section. No hunting of any species listed in this regulation is permitted on inland areas during quota gun deer hunt days as listed in 301 KAR 2:111. Permanent blinds are not permitted on inland areas nor along the Kentucky Lake shoreline area. Decoys and temporary blinds shall be removed at the end of each hunting day.

(4) Lake Barkley Wildlife Management Area located in Trigg, Lyon, and Livingston Counties.

(a) Closed areas. Refuge areas shall be closed to all hunting, fishing, boating and molesting of all species listed in this regulation during the dates designated in this subsection and on signs posted along the boundaries. Refuges and closing dates are as follows: November 1 through February 15 within an area including a row of islands on the west side of the main channel as marked by buoys and signs between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light), excluding Taylor and Jake Fork Bays as marked by buoys and signs. Within the refuge area, that area west of a line from the north point of the mouth of Fulton Bay to the south point of the mouth of Honker Bay will remain closed until March 15 as marked by buoys and signs. Boating is allowed but hunting is prohibited within 200 yards of the area surrounded by a levee and located between river mile 68.4 and river mile 70.4 during the period October 15 through March 15.

(b) Blinds. Permanent blinds shall remain within ten (10) yards of the assigned numbered blind marker within the two (2) areas described as follows:

1. Beginning at the mouth of Donaldson Creek and proceeding south along the east side of the old Cumberland River channel as marked by buoys, to a point due west of the boat ramp at Linton, then east to the Linton boat ramp, then north along the east shore of Barkley Lake to the mouth of Donaldson Creek;

2. Beginning at the Pryor's Creek Light extending south along the western shore of Barkley Lake to the boat ramp at the end of Land Between the Lakes Road 204 thence to the west side of the Cumberland River Channel, marked with buoys, to river mile 73.5, thence north along the west side of the Cumberland River channel, marked with buoys, to the Pryor Creek Light. All other blinds within this described area shall be temporary.

(5) Sloughs Wildlife Management Area located in Henderson and Union Counties.

(a) Grassy Pond-Powell's Lake Unit. Hunting is permitted only from permanent blinds constructed by the department. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(b) Jenny Hole-Highland Creek Unit. Hunting shall be allowed from permanent blinds constructed by the department and at any other above ground site provided there is a minimum of

200 yards between hunters or hunting parties. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

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

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

(e) Sauerheber Unit. On the Crenshaw and [old] Duncan Tracts - waterfowl hunting shall be allowed only on Thursdays through Sundays and from permanent blinds constructed by the department. Use of the constructed blinds shall be by drawing unless the person(s) drawn do not occupy the blind by the opening of legal shooting hours. The remainder of the Sauerheber Unit, including the Wood Tract, located between mile marker 4 and 6 on state road 268 and bounded by the Ohio River on the north and Tram Road on the east is closed to all hunting, fishing, boating and trespassing between October 15 and March 15.

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

(7) Hunting of all species listed in this regulation is not permitted on the following areas:

(a) Ohio River in the vicinity of the Ballard Wildlife Management Area located in Ballard County, from a point fifty (50) yards upstream from Dam 53, downstream to a point fifty (50) yards below the downstream boundary of the Ballard Wildlife Management Area.

(b) All portions of Grayson Lake Wildlife Management Area located in Carter and Elliott Counties, except the following:

1. That portion west of route 1496 and east of the boundary delineated by the following: Bruin Creek to the Bruin Creek Fork of Grayson Lake, the Bruin Creek Fork, the mainstem of Grayson Lake north of the Bruin Creek Fork;

2. Grayson Lake north of Rosedale Point;

3. Grayson Lake within fifty (50) yards of the state park shoreline. [That portion of the Grayson Lake Wildlife Management Area located in Carter and Elliott Counties, which lies east of the Little Sandy River and on Bruin Creek portions of Grayson Lake.]

(c) Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties.

(d) Cane Creek Wildlife Management Area located in Laurel County.

(e) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties.

(f) Redbird Wildlife Management Area located in Leslie and Clay Counties.

(g) Mill Creek Wildlife Management Area located in Jackson County.

(h) Beech Creek Wildlife Management Area located in Clay County.

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

(9) Ohio County south of Rough River, Muhlenburg County, except for the portion south of U.S. Highway 62 and west of State Route 181, Butler County west of State Route 79, Hopkins County north of State Route 70, south of U.S. Highway 41A and east of State Route 614 and State Route 109, Bell County south of Route 119 and east of Route 25E, Pulaski and McCreary Counties east of U.S. Highway 27 and Laurel, Clay, Whitley, Perry, Knott and Breathitt Counties are closed to goose hunting. [Ohio County south of Rough River, Muhlenberg County east of state route 181, Butler County west of state route 79, Pulaski and McCreary Counties east of U.S. Highway 27 and Laurel, Whitley, Perry, Knott and Breathitt Counties are closed to goose hunting.]

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

(11) Blind restrictions for Barkley Lake, Barren Lake, Green River Lake, Nolin River Lake, Rough River Lake, Buckhorn Lake and Taylorsville Lake Wildlife Management Areas.

(a) Permanent blinds shall be registered on a permit issued by the U.S. Army Corps of Engineers. Applicants may designate one (1) other person as a partner for registration. No more than two (2) nontransferable permits shall be issued for each permanent blind. Only one (1) permit shall be issued per hunter per area. Permittees who have not constructed a blind at the designated location by November 20 shall forfeit their permit.

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

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

(d) Permanent blinds shall be removed within thirty (30) days of the close of waterfowl season unless extension of that period is approved.

(e) Permittees shall be selected by drawing at Barkley Lake, Barren Lake, Green River Lake, and Taylorsville Lake Wildlife Management Areas. Applicants for blind permits shall present a current Kentucky hunting license to the registration clerk at the time of the drawing. Sites which become available by forfeiture shall be assigned to another applicant according to the following procedure: five (5) additional names shall be drawn at each area (or the number of remaining names if less than five (5) are present) and any forfeited blinds shall be assigned to those people in the order they were drawn.

(12) White City Wildlife Management Area located in Hopkins County. Waterfowl shooting hours are from one-half (1/2) hour before sunrise to 2 p.m.

(13) Taylorsville Lake Wildlife Management Area, located in Anderson and Spencer Counties. That portion east of Van Buren Boat Ramp as marked by buoys and signs is closed to all hunting, fishing, boating, and trespassing during the period from November 24 through March 1.

(14) Fulton County shall remain open to Canada goose hunting through February 9, unless closed prior to this date under the provisions of

Section 2 of this regulation.

Section 9. Ballard and Henderson-Union Reporting Area Waterfowl Hunting Permit Requirements. It is unlawful for any person to hunt waterfowl within the Ballard or Henderson-Union Reporting Areas without first obtaining the appropriate waterfowl hunting permit or waterfowl harvest register forms as specified in subsections (1), (2) and (3) of this section.

(1) Commercial waterfowl hunting areas.

(a) A commercial waterfowl hunting area permit issued by the department shall be obtained by any person operating a commercial waterfowl hunting area. An annual fee shall be charged for each commercial waterfowl hunting area permit. These permits shall expire at the end of waterfowl hunting season.

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

(2) Noncommercial waterfowl hunting areas.

(a) Any person controlling the waterfowl hunting rights and privileges on a noncommercial waterfowl hunting area shall obtain a free migratory goose hunting area permit which shall expire at the end of waterfowl hunting season.

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

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

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

(4) Obtaining permits and harvest reporting forms.

(a) Persons desiring commercial waterfowl hunting area permits, migratory goose hunting area permits, or a season supply of waterfowl harvest register forms for the Ballard Reporting Area may apply by writing to the Ballard County Wildlife Management Area, Route 1, LaCenter, Kentucky 42056, and for the Henderson-Union Reporting Area shall [may] apply by writing to the Sloughs Wildlife Management Area, RR 2, Box 183A, Corydon, Kentucky 42406.

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

Section 10. Ballard and Henderson-Union Reporting Area Recordkeeping and Reporting Requirements. (1) Commercial waterfowl hunting area permit holders.

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

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

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

(2) Migratory goose hunting area permit holders.

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

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

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

(3) Hunter requirements.

(a) Persons hunting waterfowl on commercial or noncommercial waterfowl hunting areas in the Ballard or Henderson-Union Reporting Areas shall:

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

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

(b) Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall:

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

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

3. No later than Monday [and Thursday] of each week, mail or take the completed original of the

waterfowl harvest register to the address indicated on the form.

Section 11. General Rules Concerning Waterfowl Hunting in the Ballard Reporting Area. (1) It is unlawful to hunt waterfowl except from a blind, unless waterfowl hunting is conducted in flooded, standing timber.

(2) It is unlawful to establish or use any blind [for the hunting of waterfowl] within 100 yards of any other blind.

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

(4) No more than five (5) persons shall [may] occupy a single blind at the same time.

(5) A hunter shall [may] possess only one (1) shotgun while occupying a blind.

Section 12. Waterfowl Stamp Requirements. Individuals hunting waterfowl 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: October 12, 1989
FILED WITH LRC: October 13, 1989 at 3 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:055E

This emergency administrative regulation implements the federal law Public Law 100-360 by requiring that fair hearings relating to protecting the income and resources of a couple for the maintenance of the community spouse be held within thirty (30) days of the hearing request date. This is effective October 1, 1989. This emergency administrative regulation also provides for downward adjustments to the income allowance by the agency, as circumstances causing financial duress change or no longer exist. The resource allowance of the community spouse is subject to this downward adjustment only with regard to resources attributed to the community spouse, but not transferred in the first year. This is effective October 1, 1989. This emergency administrative regulation also revises references to the peer review organization to comply with recent changes. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler for the October, 1989 filing.

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

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

904 KAR 2:055E. Hearings and appeals.

RELATES TO: KRS 205.231
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: October 31, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility under 42 CFR section 431.220, 45 CFR section 205.10, and KRS 205.231 to provide for a system of hearings to be available to any applicant for or recipient of an assistance program who is dissatisfied with any action or inaction on the part of the cabinet. This regulation sets forth the methods by which the hearing requirement is fulfilled.

Section 1. Informing the Applicant or Recipient of His Rights. Each applicant or recipient shall be informed orally and in writing when application is made and in writing when any action is taken affecting his claim of his right to a hearing, the method by which he may obtain a hearing and that he may be represented by an authorized representative, such as legal counsel, relative, friend or other spokesperson, or he may represent himself.

Section 2. Request for a Hearing. Any applicant or recipient or an authorized representative acting on his behalf, may request a hearing by filing with either the local office or central office of the Department for Social Insurance a written or oral (later reduced to writing) statement clearly indicating a desire for a hearing.

Section 3. Time Limitation for Request. To be considered timely, a written or oral request shall be received by the department within thirty (30) days of the date of the advance notice of adverse action or notice of decrease or discontinuance as it affects recipients, or within thirty (30) days of the notice of denial of an application. An additional thirty (30) days for requesting a hearing may be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:

(1) The applicant/recipient was away from home during the entire filing period; or

(2) The applicant/recipient is unable to read or to comprehend the notice of adverse action or notice of decrease or discontinuance and right to request a hearing; or

(3) The applicant/recipient moved resulting in delay in receiving or failure to receive notice of adverse action or notice of decrease or discontinuance; or

(4) Serious illness of the applicant/recipient; or

(5) The delay was no fault of the applicant/recipient.

Section 4. Continuation of Assistance. If the request results from dissatisfaction regarding a proposed discontinuance, suspension or decrease and is received within ten (10) days of the date on the advance notice of adverse action or notice of decrease or discontinuance, assistance shall be continued (unless the client requests the discontinuance, suspension or decrease be in effect pending the hearing decision) through the month in which the hearing officer's decision is rendered. If the request is received within twenty (20) days of the date on the advance notice of adverse action or notice of decrease or discontinuance and it is established that the reason for delay meets the good cause criteria as contained in Section 3 of this regulation, assistance shall be reinstated and continued through the month in which the hearing officer's decision is rendered (except that this requirement shall not require a continuation of benefits when the program benefit has been discontinued as a result of a change in law,

regulations, or policy of the cabinet). Continued or reinstated benefits are considered overpayments if the agency decision is upheld.

Section 5. All Hearing Requests shall be Acknowledged by the Hearing Branch. The acknowledgment letter shall contain information regarding the hearing process, including the right to case record review prior to the hearing, the right to representation, and a statement to the effect that the local office can provide information regarding the availability of free representation by legal aid or welfare rights organizations within the community. Subsequent notification shall include the time and place the hearing will be held. Hearings shall be scheduled on a timely basis to assure that no more than ninety (90) days shall elapse from date of request to date of decision, with the exception that any hearing determination regarding a community spouse income/resource allowance shall be held within thirty (30) days of the hearing request date.

Section 6. Withdrawal or Abandonment of Request. The applicant or recipient may withdraw his request for a hearing prior to release of the hearing officer's decision, provided he is granted the opportunity to discuss withdrawal with his legal counsel or representative, if any, prior to finalizing the action. A hearing request shall be considered abandoned if the applicant or recipient fails without prior notification, to report for the hearing, except that no hearing request shall be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, the opportunity to establish that such failure was for good cause.

Section 7. Applicant's or Recipient's Rights Prior to a Hearing. All applicants/recipients shall be informed of their right to legal counsel or other representation, of the right to case record review relating to the issue and of the right to submit additional information in support of the claim. When the hearing involves medical issues, a medical assessment by other than the person or persons involved in the original decision shall be obtained at cabinet expense if the hearing officer considers it necessary. If a medical assessment at cabinet expense is requested by the applicant/recipient and denied by the hearing officer, the reason for denial shall be set forth in writing.

Section 8. Corrective Action. If after a review of the case record, but prior to scheduling a hearing, the hearing officer determines that action taken or proposed to be taken, is incorrect, he shall authorize corrective action in the form of assistance to which the applicant or recipient would have been entitled but for the incorrect decision or, for proposed action, authorize continuing assistance. The applicant/recipient shall be then given the opportunity to withdraw the hearing request, but notwithstanding the corrective action, the hearing shall be scheduled if the applicant/recipient wishes to pursue the request.

Section 9. Conduct of a Hearing. (1) The hearing shall be conducted by a hearing officer whose impartiality is assured in that he shall not have been involved in the initial determination on the issue, or, to the extent possible, in previous hearings in behalf of the applicant/recipient. In addition a hearing officer may disqualify himself due to personal knowledge of circumstances of the applicant/recipient. The applicant/recipient may challenge the hearing officer by presentation of factual evidence that the impartiality criteria is not met. The hearing shall be conducted where the applicant/recipient may attend without undue inconvenience.

(2) The applicant/recipient, his representative and any other party to the hearing may present such evidence as shall be pertinent to the issue on which the adverse action was, or is proposed to be, taken, advance any arguments without undue interference.

(3) The hearing officer shall, if necessary to secure full information on the issue, examine each party who appears and his witnesses. The hearing officer may take any additional evidence which he deems necessary; but if additional evidence is taken, all interested parties shall be afforded the opportunity of examining or rebutting such additional evidence.

(4) The parties to the hearing, with the consent of the hearing officer, may stipulate the facts involved, in writing. The hearing may be decided on the basis of such stipulation or the hearing officer may schedule a hearing and take such additional evidence as is deemed necessary.

(5) All hearings shall be conducted informally and in such a manner as to determine the substantial rights of the parties. Telephonic hearings may be conducted, when the applicant or recipient consents, including all of the parties and their witnesses who shall testify under oath or affirmation. All facts relevant to the issue appealed shall be considered and passed upon:

(a) Parties to a telephonic hearing who wish to introduce documents or written materials into the record at the hearing shall immediately mail copies of such documents to the hearing officer and to the opposing party.

(b) Failure to provide both the hearing officer and the opposing party with copies of evidence referenced in paragraph (a) of this subsection may result in its being excluded from the record.

(6) Subpoenas may be issued by the hearing officer to compel attendance of any witness or the production of records except that subpoenas requested by the applicant/recipient shall be issued only on a sworn statement of need by the applicant/recipient.

(7) The hearing officer may direct or grant a continuance of a hearing to secure necessary evidence.

Section 10. The Decision. After the hearing is concluded, the hearing officer shall set forth in writing his finding of facts and issues, specifying the reasons for the decision and identifying the supporting evidence and regulations. Decisions with regard to a community spouse's income allowance are subject to downward adjustments as deemed necessary by the agency as circumstances causing financial duress change or no longer exist. The resource allowance is subject to this adjustment only with regard to resources attributed to the community spouse but not transferred in the first year. This adjustment is appealable

pursuant to Section 4 of this regulation. A copy of the decision shall be mailed to the applicant/recipient and his representative. The decision, with respect to the issues considered, shall be final unless further appeal to the appeal board is initiated under KRS 205.231(4) within twenty (20) days from the date of mailing of the decision.

Section 11. Appeal from Decision of Hearing Officer. Any applicant/recipient or his authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3). To be timely, such request shall be received in a local office or the central office of the Department for Social Insurance within twenty (20) days of the date on which the hearing officer's decision was mailed, except that a request received within thirty (30) days of the hearing officer's decision will be considered timely if the criteria in Section 3 of this regulation is met. The request shall be filed in writing or orally, later reduced to writing, and shall be considered filed on the day it is received.

Section 12. Applicant's or Recipient's Rights Prior to Appeal Board Consideration. All appeals shall be acknowledged in writing to the applicant/recipient and his authorized representative. The acknowledgment shall offer the opportunity to file briefs or submit new and additional proof and shall state the tentative date on which the board will consider the appeal.

Section 13. Appeal Board Review. All appeals to the appeal board shall be considered upon the records of the department and the evidence or exhibits introduced before the hearing officer unless the applicant/recipient specifically requests permission to file additional proof. When an appeal is being considered on the record, the parties may, if they desire, present written arguments and at the board's discretion be allowed to present oral arguments. In addition, the appeal board may direct the taking of additional evidence before it, if needed, to resolve the appeal. Such evidence shall be taken by the board after seven (7) days notice to the parties giving the parties the opportunity to object to introduction of additional evidence or to rebut or refute any additional evidence.

Section 14. The Appeal Board Decision. The decision of the appeal board, duly signed by members of the board, shall set forth in writing the facts on which the decision is based and shall be irrevocable in respect to the issues in the individual case unless set aside through the judicial review process as provided in KRS 205.234.

Section 15. Payments of Assistance. Payments of assistance to carry out decisions of hearing officers or the appeal board shall be made promptly and shall include the month of application or the month in which incorrect action of the cabinet adversely affected the applicant/recipient providing it is established that the applicant/recipient was eligible during the entire period in which assistance was withheld.

Section 16. Special Provisions Relating to Skilled Nursing and Intermediate Care Level of Care Determinations. The cabinet contracts [has contracted] with a peer review [the Sentinel] organization to perform level of care determinations for individuals in skilled nursing and general intermediate care facilities. For those individuals appealing the peer review organization's [Sentinel] level of care determinations, the following special provisions are applicable:

(1) Kentucky's designated peer review organization, [Sentinel,] pursuant to its contract with the cabinet, makes level of care determinations (i.e., a determination as to whether patient status criteria is met). If the level of care determination is adverse to the client, a written notice of the decision (and of the client's appeal rights) is provided to the client (patient), physician of record, the facility (if any), and the cabinet. The client then may begin the appeal process by requesting a reconsideration of the adverse decision. The request for reconsideration shall be made within sixty (60) days of the notice of the adverse decision. If the request for reconsideration is made within ten (10) days, benefits shall continue (as appropriate) until the reconsideration decision has been made. Reconsiderations shall be made within ten (10) working days of the request when the client is in the facility; if the request for reconsideration is received after the client has left the facility, the reconsideration shall be made within thirty (30) days.

(2) When the reconsideration decision is adverse to the client, he may then appeal to the cabinet in the usual manner. The appeal shall be filed within twenty (20) days of the date the client is notified of the reconsideration decision, and may be filed with the peer review organization [Sentinel] or directly with the department. If filed with the peer review organization, they [Sentinel, Sentinel] shall forward the request with appropriate medical records and any other necessary documentation to the cabinet.

(3) When a negative decision has been appealed to the cabinet, the appeal shall be processed as set forth in this regulation. This provision shall not require a continuation of benefits following a reconsideration and shall not be used to contravene the timeliness provisions contained in this section.

Section 17. Limitation of Fees. (1) Although the cabinet and its officers and employees, either in their official or personal capacity, are not liable for payment of any attorneys fees, the cabinet shall, in accordance with KRS 205.237, set the maximum fee that an attorney may charge the applicant or recipient for representation in all categories of public assistance as follows:

(a) Seventy-five (75) dollars for preparation and appearance at hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation (briefs included) of appeals to the appeal board;

(c) $175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court;

(d) $300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals.

(2) The fee agreed to by the representative and his client within the above maximums shall be deemed to have the approval of the cabinet.
(3) Enforcement of payment of such fee shall be a matter entirely between such counsel or agent and the applicant/recipient. Such fee shall not be deducted, either in whole or in part, from the benefit checks otherwise due and payable to the applicant/recipient.

Section 18. Hearings and Appeals Relating to Decisions to Reclassify or Transfer Mentally Retarded Persons in State Institutions. In lieu of the hearing and appeal process specified above, hearings and appeals relating to decisions to reclassify or transfer mentally retarded persons in state institutions shall be in accordance with the requirement of KRS 210.270.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: September 25, 1989
FILED WITH LRC: October 31, 1989 at 3 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:116E

This emergency administrative regulation is necessary for the timely implementation and administration of the Low Income Home Energy Assistance Program in accordance with the federal fiscal year 1990 Low Income Home Energy Assistance Block Grant Application and Plan Narrative. In order to implement the program on October 16, 1989 as specified in the plan narrative it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

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

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

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

RELATES TO: KRS 194.050
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: October 26, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by Public Law 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation states the eligibility and benefits criteria for each of two (2) components of energy assistance, subsidy and crisis, under the Home Energy Assistance Program (HEAP).

Section 1. Definitions. Terms used in HEAP are defined as follows:
(1) "Principal residence" is the place where a person is living voluntarily and not on a temporary basis; the place he considers home; the place to which, when absent, he intends to return; and the place is identifiable from other residences, commercial establishments, or institutions.
(2) "Energy" means electricity, gas, and any other fuel that is used to sustain reasonable living conditions.
(3) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.
(4) "Economic unit" is one (1) or more persons sharing common living arrangements.
(5) "Subsidy component" is the portion of benefits reserved as energy assistance for heating.
(6) "Crisis component" is the component administered by local organizations under contract with the cabinet to provide heating crisis assistance.
(7) "Life threatening situation" under the crisis component means without heat or will be without heat within forty-eight (48) hours and temperatures at a dangerous level for household members.
(8) An "authorized representative" is the person applying on behalf of a household who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

Section 2. Application. Each household or authorized representative of the household requesting assistance shall complete an application and provide information necessary to determine eligibility and benefit amount. An application shall not be considered completed until all information needed to determine eligibility and benefit amount is received.

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

Income Scale

Family Size	Monthly	Yearly
1	$ 548	$ 6,578
	$ [529	$ 6,347]
2	735	8,822
	[709	8,503]
3	922	11,066
	[888	10,659]
4	1,109	13,310
	[1,068	12,815]
5	1,296	15,554
	[1,248	14,971]
6	1,483	17,798
	[1,427	17,127]

(c) For each household member more than six (6), the above income eligibility limitation for six (6) shall be increased by $187 [180] monthly or $2,244 [2,156] yearly.

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

(e) Applicants for the crisis component shall be without heat, be without fuel within five (5) days, have received a notice of disconnection of service, or require a heat system repair to obtain adequate heat.

(2) Households are eligible to receive benefits under the subsidy component once and under the crisis component not to exceed the maximum amount of benefits.

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

(1) Payments to eligible households under the subsidy component shall be made for the full benefit amount based on type of energy for heating, monthly household income, and household size as follows:

Benefit Scales
Subsidy Component

Scale A.
Energy Sources: Electricity

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$123	$135
$401 - $800	$105	$117
Over $800	---	$101

Scale B.
Energy Sources: LP Gas (Propane), Fuel Oil, Kerosene, Natural Gas

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$113	$125
$401 - $800	$ 95	$107
Over $800	---	$ 88

Scale C.
Energy Sources: Coal, Wood

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$100	$112
$401 - $800	$ 82	$ 94
Over $800	---	$ 75

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

(3) Benefits to eligible households under the crisis component shall be in the form of fuel or other energy for heating, heaters, blankets, sleeping bags, vouchers to purchase these item, or repair to a heating system to obtain adequate heat. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis, not to exceed a maximum of $300 total benefit value for each eligible household.

(4) In the crisis component the contracting agency may take into consideration household resources available for home heating in determining the minimum amount necessary to alleviate the crisis.

(5) In the crisis component the benefit for a crisis of a household threatened with eviction whose heat is an undesignated portion of the rent, shall be for the energy portion of their rent which is defined as an amount up to the Standard Utility Allowance (SUA) in the Food Stamp Program as follows:

Household Size	SUA
1 and 2	$145
3	$151
4 or more	$166

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

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

(2) When a two (2) party check is not issued under the subsidy component, the recipient shall sign a statement on the application prior to receipt of funds affirming that benefits received under HEAP shall be used solely for home energy.

(3) Under the subsidy component, at the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider (for example, when the recipient heats with both a wood stove and electric space

heaters). However, the total amount of the payments shall not exceed the maximum for the primary source of energy for heating. The household may decide how to divide payment if more than one (1) provider is used.

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

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

Section 7. Time Standards. Under the subsidy component, the cabinet shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days. Under the crisis component, completed applications shall be processed so that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours. Applicants under the crisis component shall have five (5) [ten (10)] working days from the date of application to provide information necessary to complete the application.

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP depending upon the availability of funds:

(1) Applications for the subsidy component shall be accepted from households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits due to 100 percent disability beginning October 16, 1989 [17, 1988] and ending by October 27, 1989 [28, 1988].

(2) Applications for the crisis component shall be accepted beginning January 8, 1990 [9, 1989] and ending by April 27, 1990 [28, 1989].

(3) Applications shall be processed in the order taken until funds are expended. HEAP subsidy component shall be terminated when actual and projected component expenditures have resulted in utilization of available funds or October 27, 1989 [28, 1988].

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

Section 9. Allocation of Funds. (1) Up to fifteen (15) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) Up to $10,234,322 [9,677,341] of benefit funds shall be reserved for the crisis component. Eighty-five (85) percent of the funds reserved for the crisis component shall be allocated, by local administering agency, based upon the 1980 Census poverty levels of the counties served by the local administering agency. Fifteen (15) percent of the funds plus any additional funds made available from the subsidy component or from the Energy Assistance Trust Fund shall be held by the contracting agency as a contingency fund to be allocated to any local administering agency of the state chosen at the discretion of the contracting agency to provide low income home energy assistance in accordance with its contract. On February 5, 1990 [6, 1989], all unobligated allocations may be reallocated by the contracting agency with the concurrence of the Department for Social Insurance.

(3) Up to $5,200,000 [5,900,000] of benefit funds shall be reserved for the subsidy component. Any funds remaining unobligated from the subsidy component may be made available under the crisis component.

(4) Up to $300,000 of the contingency fund under subsection (2) of this section shall be reserved to assure component availability until March 15, 1990 [1989] for emergency crisis assistance for households who are without heat.

(5) Up to $25,000 shall be reserved for the Preventive Assistance Program administered by the Department for Social Services to assist families with an energy payment not to exceed $300 for each family if the payment shall prevent the removal of a child from a family or if it shall assist in reuniting a child with the family.

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

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

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

(3) HEAP recipients shall not be treated worse than households not receiving benefits;

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

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

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: October 10, 1989
FILED WITH LRC: October 26, 1989 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:004E

This emergency administrative regulation is being amended to comply with the Medicare Catastrophic Coverage Act of 1988 which requires states to make special income and resource allowances for institutionalized individuals who have community spouses. In addition, it is necessary to amend the regulation to show minor program revisions relating to transfer of assets, budgeting for home and community based waiver services, and disregard of the federal earned income tax credit. This regulation must

be promulgated on an emergency basis to comply with the federal requirements. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on or about July 14, 1989 since that regulation did not contain the Medicare Catastrophic Coverage Act requirements or the other program revisions described above. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which will be filed with the Regulations Compiler on or about October 1, 1989.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:004E. Resource and income standard of medically needy.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: November 2, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Definitions. The following definitions shall be applicable:

(1) "Spouse" means a person legally married to another under state law.

(2) "Institutionalized spouse" means an individual who is in a medical institution or nursing facility, or participates in a home and community based services (HCBS) waiver program, with a spouse who is not in a medical institution or nursing facility or HCBS waiver program so long as such individual is likely to be in the medical institution or nursing facility or waiver program for at least thirty (30) consecutive days while the community spouse remains out of a medical institution or nursing facility or HCBS waiver program.

(3) "Community spouse" means the spouse of an institutionalized spouse, who remains at home in the community and is not living in a medical institution or nursing facility or participating in an HCBS waiver program.

(4) "Medical institution or nursing facility" means a hospital, skilled nursing facility, or intermediate care facility (including intermediate care facility for the mentally retarded).

(5) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home (or both) and may include thirty (30) consecutive days of receipt of home and community based waiver services (or a combination of both). A continuous period of institutionalization terminates when an individual has been out of a medical institution or nursing facility, or HCBS waiver program, for thirty (30) consecutive days.

(6) "Likely to remain" in an institution means a determination by the cabinet based on a physician's written statement that an individual in a medical institution, nursing facility, or HCBS waiver program is expected to remain in that setting or program for thirty (30) consecutive days.

(7) "Countable resources" are resources not subject to exclusion in the Medicaid Program.

(8) "State spousal resource standard" means the amount of couples' combined countable resources determined necessary by the cabinet for community spouses to maintain themselves in the community.

(9) "Spousal protected resource amounts" are resources deducted from couples' combined resources for community spouses in eligibility determinations for institutionalized spouses; amounts above spousal protected resource amounts are used to determine eligibility for institutionalized spouses.

(10) "Spousal resource allowances" means the differences in the dollar value of resources protected for community spouses and the value of the resources actually held in the name of community spouses.

(11) "Resource assessment" means the assessment, upon request by either spouse, of the joint resources of a couple when a member of the couple enters a medical institution or nursing facility or becomes a participant in an HCBS waiver program.

(12) "Support right" means the right of institutionalized spouses to receive support from community spouses under state law.

(13) "Assigned support right" means the assignment of the support right of an institutionalized individual to the state or Medicaid program.

(14) "Undue hardship" means that Medicaid eligibility of the institutionalized spouse cannot be established on the basis of assigned support rights and the spouse is subject to discharge from the medical institution, nursing facility, or HCBS waiver program due to inability to pay.

(15) "Other family members" means children who are either minor or dependent, dependent parents and dependent siblings of either member of a couple and who reside with the community spouse.

(16) "Minors" means the couples' minor children (under age twenty-one (21)) who live with a community spouse and are being claimed as dependents by either spouse under the Internal Revenue Service Code (IRSC).

(17) "Dependent children" means the couples' children age twenty-one (21) and above who live with the community spouse and are claimed as dependents by either spouse under the IRSC.

(18) "Dependent parents" means parents of either member of a couple who live with the community spouse and are claimed as dependents by either spouse under the IRSC.

(19) "Dependent siblings" means a brother or sister of either member of a couple (including half-brothers and half-sisters and siblings gained through adoption) who reside with the community spouse and are claimed as dependents by either spouse under the IRSC.

(20) "Otherwise available income" means income to which community spouses have access and control.

(21) "Gross income" means nonexcluded income which would be used to determine eligibility

prior to income disregards.

(22) "Community spouse maintenance standard" means the income standard to which community spouses' income is compared for purposes of determining the amount of allowances used in the posteligibility calculation.

(23) "Other family members maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of other family members and the standard maintenance amount.

(24) "Standard maintenance amount" means one-twelfth (1/12) of the nonfarm income official poverty line (defined by the federal Office of Management and Budget and revised annually in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981) for a family unit of two (2) members (with revisions of the official poverty line applied for medical assistance provided during and after the second calendar quarter that begins after the date of publication of the revisions) multiplied by 122 percent effective September 30, 1989, and multiplied by 133 percent effective July 1, 1991, and multiplied by 150 percent effective July 1, 1992.

(25) "Monthly income allowances" means amounts deducted in the posteligibility calculation for maintenance needs of community spouses and other family members. The allowances are based on the deficit remaining after spouses' and other family members' income is compared to appropriate maintenance needs standards.

(26) "Significant (or extreme) financial duress" exists when either member of a couple establishes to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse so as to permit the community spouse to remain in the community.

Section 2. [1.] Resource Limitations and Exclusions of the Medically Needy. The following provisions are applicable with regard to computation of allowable resources:

(1) The upper limit for resources for family size of one (1) and for family size of two (2) is set at $2,000 and $4,000 respectively, effective January 1, 1989, with fifty (50) dollars for each additional member.

(2) A homestead, occupied or abandoned, household equipment, and farm equipment without limitation on value are excluded from consideration.

(3) Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, is excluded from consideration. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or nonincome producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) Equity of $4,500 in automobiles is excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, of if specially equipped (e.g., as for use by the handicapped) the total value of such automobile is excluded.

(5) Burial reserves of up to $1,500 per individual, which may be in the form of burial agreement(s) (prepaid burials or similar arrangements), trust fund(s), life insurance policies, or other identifiable funds are excluded from consideration. The cash surrender value of life insurance is considered when determining the total value of burial reserves. When burial funds are commingled with other funds, the applicant has up to thirty (30) days to separately identify the burial reserve amount. Interest or other appreciation of value of an excluded burial reserve is excluded so long as such amount is left to accumulate as a part of the burial reserve.

(6) Burial spaces, plots, vaults, crypts, mausoleums, urns, caskets, and other repositories which are customarily and traditionally used for the remains of deceased persons are excluded from consideration as a countable resource without regard to value.

(7) Resources determined in accordance with subsections (3), (4), and (5) of this section, or Section 21 of this regulation, to be in excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group is ineligible.

(8) The following exclusions are also applicable as stated:

(a) Proceeds from the sale of a home are excluded from consideration for three (3) months from date of receipt if used to purchase another home.

(b) Resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support are excluded from consideration.

(c) Payments or benefits from federal statutes, other than Title XVI (Supplemental Security Income), are excluded from consideration (as either a resource or income) if precluded from consideration in Title XVI determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance is excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource is excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(f) Effective with regard to determinations of eligibility made on or after April 16, 1988, and applicable with regard to the usual three (3) month period for retroactive eligibility, the life interest that Medicaid applicants or recipients may have in real estate or other property shall be excluded from consideration as an available resource.

(g) Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988 real property is excluded from consideration for adult medical assistance and state supplementation recipients if:

1. Such property is jointly owned and its sale would cause undue hardship due to loss of housing for the other owner or owners; or

2. Its sale is barred by a legal impediment; or

3. The owner's reasonable efforts to sell have been unsuccessful.

(h) Cash payments intended specifically to enable applicants or recipients to pay for medical or social services are not considered as available income or as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it will be considered a resource.

(i) Effective with regard to determinations of eligibility made on or after June 1, 1989, any amount received which is a result of an underpayment (i.e., which is a retroactive payment) of benefits from Title II (Federal Old Age, Survivors, and Disability Insurance Benefits) or Title XVI (Supplemental Security Income) is excluded as a resource for the first six (6) months following the month in which the amount is received or for the first nine (9) months following receipt if receipt is during the period of October 1, 1987 through September 30, 1989.

Section 3. [2.] Income and Resource Exemptions. Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) may not be allowed in determining eligibility for medical assistance only.

Section 4. [3.] Income Limitations of the Medically Needy. Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 5 [4] of this regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$2,600	$217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

For each additional member, $720 annually or sixty (60) dollars monthly is added to the scale. The change shown in this section of the regulation shall be effective with regard to determinations of eligibility made on or after July 1, 1989.

Section 5. [4.] Additional Income Considerations. (1) In comparing income with the scale as contained in Section 4 [3] of this regulation, gross income is adjusted as follows in all cases with exceptions as contained in Section 6 [5] of this regulation:

(a) Effective with regard to determinations of eligibility made on or after October 1, 1989, in Aid to Families with Dependent Children (AFDC) related medical assistance cases [In cases of adults and children], the standard work related expenses of adult members and out-of-school youth are deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction is ninety (90) [seventy-five (75)] dollars per month. All earnings of an in-school child are disregarded. Full-time and part-time employment, and school attendance, shall be as defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(b) Effective with regard to determinations of eligibility made on or after October 1, 1989, in AFDC related medical cases, dependent care as a work expense is allowed (but only when the dependent is included in the assistance unit) for full-time and part-time employment (as defined in 904 KAR 2:016, Standard for need and amount; AFDC). The dependent care work expense shall be deducted after all other disregards have been applied. The dependent care work expense allowed shall not exceed, per month, $200 for full-time or part-time employment per child under age two (2), and $175 for full-time employment or $150 for part-time employment per child age two (2) and above and for each incapacitated adult. [In cases of adults and children, dependent care as a work expense is allowed not to exceed $160 per child or incapacitated adult per month for full-time employment (as defined in subsection (1) of this section) or $110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1) of this section). A dependent care work expense deduction is allowed only when the dependent is included in the assistance unit.]

(c) Effective with regard to determinations of eligibility made on or after October 1, 1989, in AFDC related medical assistance cases, any advanced payment or refund relating to the federal earned income tax credit shall be disregarded.

(2) The following special factors are applicable for pregnant women, infants and children eligible pursuant to Section 9401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86):

(a) Such pregnant women and children may have family income up to, but not to exceed, 100 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of March [July] 1 of the particular state fiscal year;

(b) Pregnant women, infants and children who would be eligible under the provisions of OBRA 86 except for income in excess of the allowable standard may not become eligible by spending down to the official poverty guidelines;

(c) Effective with regard to determinations of eligibility made on or after June 1, 1989, available resources shall be disregarded;

(d) The Aid to Families with Dependent Children (AFDC) budgeting methodology (except for application of the AFDC earned income disregard of the first thirty (30) dollars and one-third (1/3) of the remainder) shall be used; and

(e) Changes of income that occur after the determination of eligibility of a pregnant woman shall not affect such pregnant woman's eligibility through the remainder of the pregnancy including the usual post partum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) Effective with regard to determinations of eligibility for Medical Assistance furnished on or after October 1, 1988, pregnant women and children eligible pursuant to Section 4101 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) shall be subject to the same special factors applicable to pregnant women, infants, and children as specified in subsection [4] (2)(b), (c), (d) and (e) of this section [regulation], and this additional special factor: such pregnant women and children under age one (1) may have family income up to, but not to exceed, 125 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of March [July] 1 of the particular state fiscal year.

(4) The following special income and resource limits and provisions are applicable for determinations of eligibility of qualified Medicare beneficiaries for the special Title XVIII benefits described in 907 KAR 1:006, effective for determinations of eligibility made on or after January 1, 1989.

(a) The following income upper limits, shown as a percentage of the official poverty income level, shall be effective on the specified dates: January 1, 1989, eighty-five (85) percent; January 1, 1990, ninety (90) percent; January 1, 1991, ninety-five (95) percent; and January 1, 1992, 100 percent.

(b) The official poverty income guidelines will be those promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of March [July] 1 of the particular state fiscal year.

(c) The income disregards to be used will be those applicable in the federal Supplemental Security Income (SSI) program.

(d) Resources shall be limited to no more than twice the allowable amount for the federal Supplemental Security Income (SSI) program.

Section 6. [5.] Specified Individuals in Long-Term Care Facilities [Chronic Care Institutions]. For aged, blind or disabled individuals in long-term care facilities not subject to treatment as the institutionalized spouse of a community spouse as shown in Section 21 of this regulation [chronic care facilities], the following requirements with respect to income limitations and treatment of income shall be applicable.

(1) In determining eligibility, the appropriate medically needy standard or special income level is used as are appropriate disregards and exclusions from income. In determining patient liability for the cost of institutional care, gross income is used as shown in subsections (2) and (3) of this section.

(2) Income protected for basic maintenance, effective July 1, 1986, is forty (40) dollars monthly in lieu of the figure shown in Section 4 [3] of this regulation. All income in excess of forty (40) dollars is applied to the cost of care except as follows:

(a) Available income in excess of forty (40) dollars is first conserved as needed to provide for needs of the [spouse and] minor children up to the appropriate family size amount from the scale as shown in Section 4 [3] of this regulation.

(b) Remaining available income is then applied to the incurred costs of medical and remedial care that are not subject to payment by a third party (except that, effective for determinations of eligibility for periods beginning on or after December 1, 1988, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state), including Medicare and health insurance premiums and medical care recognized under state law but not covered under the state's Medicaid plan.

(3) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs.

(4) When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the Medical Assistance Program) if actually available for payment to the provider.

(5) Effective with regard to determinations of eligibility made on March 16, 1989 and thereafter, Supplemental Security Income (SSI) or state supplementation payments received by specified institutionalized Medicaid eligible individuals in accordance with Section 1611(e)(1)(G) of the Social Security Act shall be excluded from consideration as either income or a resource, and such payments may not be used in the posteligibility process to increase the patient liability.

Section 7. [6.] Spend-down Provisions. No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 4 [3] of this regulation may qualify for medical assistance in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period; effective October 1, 1988, medical expenses incurred in periods prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income so long as such medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses. Effective for determinations of eligibility for periods beginning on or after February 1, 1989, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state and still be considered incurred costs of the applicant or recipient.

Section 8. [7.] Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment.

Section 9. [8.] Special Needs Contributions for Institutionalized Individuals. Voluntary

payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medical Assistance Program. Examples of such special services or items include television and telephone service, private room or bath, private duty nursing services, etc.

Section 10. [9.] Pass-through Cases. Increases in social security payments due to cost of living increases but for which the individual would be eligible for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements. Beginning on November 1, 1986, the additional amount specified in Section 12202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) shall be disregarded, i.e., that amount of social security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) such individuals would be eligible for federal supplemental security income benefits; eligibility as a result of such disregard shall not exist prior to July 1, 1986. To be eligible, applicants must apply by July 1, 1988.

Section 11. [10.] Relative Responsibility. For purposes of the Medical Assistance Program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Effective for determinations of eligibility made on or after December 1, 1987, children under age twenty-one (21) living with parents (but not including children age eighteen (18) and above who are blind or disabled) are considered dependent minor children for purposes of deeming of income and resources under the Medicaid Program even if such children are emancipated under state law. This responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, but not including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness. Effective July 1, 1987, a husband and wife sharing a room or comparable accommodation in a long term care facility may be considered to be "living with" each other after they have continuously shared such a room or accommodation for six (6) months, if treating such husband and wife as living apart would prevent either of them from receiving medical assistance.

(2) In cases of aged, blind, or disabled applicants or recipients living with their eligible spouse, total resources and adjusted income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind or disabled applicants or recipients living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below.

(a) Determine the potential spend-down amount of the eligible individual by comparing the countable income to the Medically Needy Income Level (MNIL) for one (1) as shown in Section 4 [3] of this regulation.

(b) Allocate to other dependents in the household from the ineligible spouse income in an amount equal to one-half (1/2) of the MNIL for a family size of one (1) for each dependent.

(c) If the ineligible spouse's income is more than one-half (1/2) of the MNIL for a family size of one (1), combine the income of the ineligible spouse with that of the eligible individual and compare that figure with the MNIL for a couple to determine continuing eligibility or the spend-down amount. Effective December 1, 1989, if the ineligible spouse's income is less than one-half (1/2) of the MNIL for a family size of one (1), the income is disregarded and the income of the eligible individual is compared with the MNIL for a family size of one (1).

(d) Compare the amount resulting from paragraph (a) of this subsection with the result of paragraph (c) of this subsection and determine eligibility using the spend-down amount, if any, which is greater.

(e) Resources shall be considered in the same manner as for an eligible spouse.

(4) In cases of aged, blind, or disabled couples, living apart for any reason other than institutionalization, both of whom are concurrently applying for or receiving MA only, income and resources are considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (5) [(4)] of this section. If the separation is due to the institutionalization of a spouse, mutual consideration of income for the institutionalized spouse ceases in the month of separation and for the community spouse in the month after the month of separation but resources are considered mutually available to each other the month of separation, and for the six (6) months following that month unless such would act to preclude eligibility of the individual in long-term care (except when the resource rule shown in Section 21 of this regulation is applicable due to a continuous period of institutionalization beginning on or after September 30, 1989).

(5) In cases of an aged, blind, or disabled individual living apart from a spouse (for a reason other than institutionalization) who is not a recipient of MA only, eligibility is determined on a couple basis for the month of separation and as a single individual after the month of separation.

(6) For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in Section 11(4) and (5) [10(3) and (4)] of this regulation, who has jointly held resources with his spouse, one-half (1/2) of the jointly held resource would be considered a resource; except

that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(7) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or nonspouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(8) In cases of a blind or disabled child under eighteen (18) living with his parent(s) (including stepparent, if applicable), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent using the adult scale. The income and resources of the parent(s) shall also be considered available to such child who is aged eighteen (18) through twenty-one (21), if in school, when to do so will work to the child's benefit and the individual was aged eighteen (18) through twenty-one (21) in September, 1980, and was MA eligible at that time.

(9) Income and resources of parent(s) are not considered available to a child living apart from the parent(s), but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and income are considered in relation to family size of one (1). Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988, the following criteria should be used to determine whether a child who has been living with his parents and is institutionalized in a psychiatric facility is to be considered as living apart from his parents: a child is to be considered as living with his parents unless he has been in the facility for thirty (30) or more days or a physician specifies that it is anticipated he will remain in the facility for thirty (30) or more days (regardless of whether the child actually does so); a child who is institutionalized in a psychiatric facility but is legally committed to or in the custody of the Cabinet for Human Resources is not to be considered as living with his parents.

(10) When a recipient (but not including a child) in a family case has income and resources considered in relation to family size and enters a long term care facility, his income and resources are considered in the same manner as previously for up to one (1) year with, effective with regard to determinations of eligibility made on or after February 1, 1988, the individual allowed forty (40) dollars as his basic maintenance standard. When a child in a family case is in the long term care facility, eligibility of the child is determined in the same manner for up to a year but his liability for the cost of care is determined by allowing to the child from his own income forty (40) dollars and considering the remainder available for the cost of care. (Note: in this situation any welfare payment made to the child is disregarded when determining liability for cost of care.) The eligibility of the individual, with regard to income and resources, shall be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 12. [11.] Treatment of Income of the Stepparent or Parent/Legal Guardian of a Minor Parent/Legal Guardian (referred to as a "Grandparent") and Effect on Eligibility of the Assistance Group Effective with Regard to Determinations of Eligibility Made On or After June 1, 1989. An incapacitated (as determined by the department) stepparent's income, or a grandparent's income, is considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. When the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income is considered available to the spouse or the grandparent's gross income is considered available to the minor parent in accordance with the policies set forth in this section.

(1) Disregards/exclusions from income. The following disregards/exclusions from income shall be applied:

(a) The first seventy-five (75) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time (with full-time and part-time employment as defined in Section 5 [4](1) of this regulation).

(b) An amount equal to the medically needy income limitations scale as shown in Section 4 [3] of this regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals (not including the spouse or minor parent) living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining his federal personal income tax liability.

(c) Any amount actually paid by the stepparent or grandparent to individuals not living in the home who are claimed by him as dependents for purposes of determining his personal income tax liability.

(d) Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(e) Income of a stepparent or grandparent receiving supplemental security income.

(f) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

(2) Determining eligibility of the grandchild(ren) and stepchild(ren). When a stepparent or grandparent has available income remaining after disregards/exclusions are applied, the income may be deemed to the spouse (of the stepparent) or minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Eligibility of the stepchild(ren) or grandchild(ren) is determined in the following manner in order to take this requirement into consideration: consider only the income of the grandchild(ren) and minor parent, or stepchild(ren) and parent (spouse of the stepparent) as appropriate. The budget size

would include the child(ren) and parent. If there is no excess, the child(ren) is eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(3)(a) To determine separate eligibility of the minor parent (of the grandchild) or spouse (of a stepparent) when the eligibility of the grandparent or stepparent is not to be determined, consider the income of the child(ren) and his parent, and the actual amount available for deeming from the grandparent or stepparent. The budget size would include the child(ren) and parent (but not the grandparent or stepparent). If there is no excess, the minor parent or spouse (of a stepparent) is eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(b) When the grandparent (of a minor parent) or the stepparent (spouse of the parent with children) are to be included in the case, eligibility of the minor parent or spouse cannot be determined separately but must be determined in combination with that of the grandparent or stepparent. The combined eligibility of the minor parent and grandparent or spouse and incapacitated stepparent is determined in the usual way including the available income of the grandparent or stepparent, the minor parent or spouse of the stepparent, and the grandchild(ren) or stepchild(ren) as appropriate. When the grandparent or incapacitated stepparent is included in the case, the amount excluded for the needs of the grandparent or stepparent in the determination of available income in subsection (1) of this section must be considered as available income for purposes of this determination of eligibility. If there is no excess, the minor parent and grandparent or spouse and incapacitated stepparent are eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(4) When determining eligibility of individuals or family groups with excess income, uncovered incurred medical expenses of all members of the budget unit (and dependents of members of the budget unit whose needs are considered when determining the eligibility of that member) may be used to meet the spend-down amount(s).

Section 13. [12.] Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, resources and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility shall be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

(4) A parent in a family case may request that one (1) or more children be technically excluded from the determination of eligibility due to income while a regular application for Medicaid eligibility is processed for other children in the family group. In this circumstance, the income and resources of the technically excluded child(ren) and the technically excluded child(ren)'s needs are excluded in the budgeting process when determining eligibility of the family group. A separate spend-down case(s) may then be established for the technically excluded child(ren); the income, resources and needs of the responsible relative or parent are included in the budget in accordance with usual criteria, and income/resources and needs of siblings in the other case may also be included in budgeting for the spend-down case if that works to the advantage of the technically excluded child(ren) for whom eligibility is being determined in the spend-down case. Excess income in the spend-down case may be spent-down using uncovered incurred medical care costs of any member of the family included in the budgeting process for the spend-down case.

Section 14. [13.] Treatment of Lump-sum Income. The following policy is effective January 1, 1986: for adult related cases, lump-sum income is prorated over the three (3) month period following the agency's notice of receipt by the client, with any amount spent by the client prior to notification of the agency deducted from the total considered available; any portion of the income remaining available after the three (3) month period is considered in relation to resource limitations; the exception to the treatment of lump sum income is specified in Section 2 [1](8)(i) of this regulation; for AFDC related cases, lump sum income is divided by the medically needy income level and prorated over the resultant number of months. Effective February 1, 1989, lump sum income for individuals eligible under the federal poverty level standards specified in Section 5 [4](2) and (3) of this regulation would be divided by the appropriate standard for the eligible group and prorated over the resultant number of months.

Section 15. [14.] Transferred Resources. [The policy relating to transferred resources shown in this section is effective for determinations of eligibility for periods of time beginning on or after July 1, 1988 and transfers of property occurring on or after that date.]

(1) Effective for determinations of eligibility made on or after October 1, 1989, an individual who transferred property on or before June 30, 1988 for less than fair market value must have a period of ineligibility for medical assistance computed beginning with the month in which the resources were transferred. The period of ineligibility shall be equal to the lesser of twenty-four (24) months or the number of months derived by deducting from the uncompensated excess value the actual cost of care on a monthly basis if the individual is institutionalized or $500 for each month from the month of transfer if not institutionalized.

(2) [(1)] Effective for determinations of eligibility on or after October 1, 1989, when an institutionalized individual (defined as an individual in a skilled nursing facility,

general intermediate care facility, or [psychiatric facility,] mental hospital, [or a participant in a hospice program who is in a skilled nursing or intermediate care facility,] or a participant in the home and community based services waiver program [or the alternate intermediate services program for the mentally retarded so long as eligibility is being determined using the special income level]) applies for medical assistance a period of ineligibility for payments for such service must be computed if at any time during the thirty (30) month period immediately preceding the application (but on or after July 1, 1988) the individual disposed of property for less than fair market value. The period of ineligibility for such service (beginning with the month in which the resources were transferred) shall be equal to the lesser of thirty (30) months or the number of months derived by dividing the total uncompensated value of the resources so transferred by the average cost, to a private patient at the time of the application, of nursing facility services in the state (either intermediate care or skilled nursing care as appropriate for the level of care).

(3) [(2)] An individual shall not be ineligible for medical assistance or an institutional type of service by virtue of subsection (1) or (2) of this section to the extent that the conditions specified in Section 1917(c)(2)(B), (C) and (D) of the Social Security Act or Section 21 of this regulation are met, nor shall an individual be ineligible for medical assistance or an institutional type of service due to transfer of resources for less than fair market value except in accordance with this section. [Transfers of resources for less than fair market value occurring prior to July 1, 1988 shall not be considered in determinations of eligibility for periods beginning on or after July 1, 1988.]

(4) [(3)] The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual shows the transfer was in accordance with Section 1917(c)(2)(B) or (C)(i) of the Social Security Act or presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is in accordance with Section 1917(c)(2)(B) or (C)(i) or is for some reason other than to qualify for medical assistance or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value. Notwithstanding the preceding, if the assessed agricultural value is used for tax purposes the transfer is required to be for an amount equal to the fair market value.

(5) [(4)] After determining that the purpose of the transfer was to become or remain eligible, the cabinet shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if nonhomestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for nonhomestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(6) [(5)] If retention would result in ineligibility, the cabinet will compute a period of ineligibility for medical assistance or an institutional type of service as provided for in subsections (1) and (2) of this section.

(7) [(6)] The uncompensated value may be excluded from consideration when good cause exists. A waiver of consideration of the uncompensated amount will be granted subject to the following criteria:

(a) "Good cause" means that an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) The exclusion may not exceed the amount of the incurred expense or loss; the amount of the uncompensated value to be excluded cannot include any amount which is payable by Medicaid, Medicare, or other insurance.

Section 16. [15.] Special Provisions for AIS/MR Recipients. Medical assistance eligibility for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section and in Section 21 of this regulation.

(1) Usual institutional deeming rules shall be applicable [with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level].

(2) AIS/MR services program participants who participate in the AIS/MR program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard). Income protected for basic maintenance of the AIS/MR participant in the posteligibility determination of patient liability for individuals eligible as medically needy or on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income program in addition to the SSI general exclusion.

(3) If an AIS/MR services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of AIS/MR services projected if eligibility is determined on a monthly basis. [When eligibility is determined using community deeming rules, the attributed cost of care against which monthly

available income of the AIS/MR participant shall be applied shall be the projected annual average cost of care for all participants divided by twelve (12) and rounded to the nearest dollar. The amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.]

(4) Eligibility shall continue on the same basis as for an institutionalized individual when the cost of care is greater than the recipient's adjusted monthly income or the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

Section 17. [16.] Special Provisions for Hospice Recipients. Medical assistance eligibility for participants under the Medicaid hospice benefit shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of the hospice participant in the posteligibility determination of patient liability for noninstitutionalized individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income (SSI) program in addition to the SSI general exclusion. For the noninstitutionalized medically needy participants (all of whom must spend-down on a quarterly basis), the amount protected for basic maintenance is the usual medically needy standard as shown in Section 4 [3] of this regulation plus the SSI general exclusion. For the institutionalized medically needy the amount protected for basic maintenance in the eligibility determination is the medically needy standard for the appropriate family size plus the SSI general exclusion. If a hospice participant is institutionalized in a long-term care facility, the basic maintenance amount is forty (40) dollars per month.

(2) When eligibility is determined for an institutionalized monthly spend-down case, the attributed cost of care against which monthly available income of the hospice participant shall be applied shall be the hospice routine home care per diem (for the hospice providing care) as established by the Medicare program plus the room and board rate for the appropriate level of care (i.e., skilled nursing or intermediate care).

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual when the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

(4) A hospice participant may be eligible for benefits based on this section only if he has elected coverage under the Medicaid hospice benefit rather than the regular Medicaid program.

(5) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 18. [17.] Special Provisions for Recipients Participating in the Home and Community Based Services Waiver Program. Medical assistance eligibility for participants under the home and community based (HCB) services waiver program shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section and in Section 21 of this regulation.

(1) Income protected for basic maintenance of HCB services program participants who are eligible as medically needy or under the special income level shown in this section shall be the standard used for an individual in the federal supplemental security income (SSI) program in addition to the SSI general exclusion.

(2) HCB services program participants who participate in the HCB program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard).

(3) If an HCB services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of HCB services projected if eligibility is determined on a monthly basis[, except that the amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion].

(4) Usual institutional deeming rules shall be applicable [with regard to all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level].

Section 19. [18.] Treatment of Potential Payments from Medicaid Qualifying Trusts. When an individual (or his spouse for the individual's benefit) creates (other than by will) a trust (or similar legal device) with amounts payable to the same individual, such trust shall be considered a "Medicaid qualifying trust" if the trustee(s) of the trust are permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual. In this circumstance the amount considered available to the trust beneficiary shall be the maximum amount the trustee(s) may (using the trustee's discretion) pay in accordance with the terms of the trust, regardless of the amount actually paid. The cabinet may, however, consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual; the criteria for determining "undue hardship" shall be established by the cabinet.

Section 20. Resource Assessment. Pursuant to Section 1924(c)(1)(B) of the Social Security Act as amended, an assessment of the joint resources of an institutionalized spouse and the community

spouse shall be made upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon receipt of relevant documentation of resources. The cabinet shall complete the assessment within forty-five (45) days when the necessary documentation or verification is provided in a timely manner. When the resource assessment is complete, each spouse shall receive a copy of the assessment and notification that the right of appeal of such assessment shall exist at such time as the institutionalized spouse applies for medical assistance.

Section 21. Protection of Income and Resources of Couple for Maintenance of Community Spouse. Section 1924 of the Social Security Act, as amended, provides for special treatment of income and resources for certain institutionalized spouses. The income eligibility and posteligibility provisions are effective October 1, 1989 for persons institutionalized on or after September 30, 1989. The resource provisions are effective with regard to determinations of eligibility made on or after October 1, 1989 for institutionalized persons beginning a continuous period of institutionalization on or after September 30, 1989.

(1) Supersedes other provisions. The provisions of this section supersede any other provisions of this regulation which is inconsistent with them.

(2) Nonapplicability. Except as specifically provided, this section does not apply to the determination of what constitutes income or resource or the methodology and standards for determining and evaluating income and resources.

(3) Provisions for treatment of income. The following income provisions shall be applicable.

(a) Separate treatment of income. During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (b) of this subsection, no income of the community spouse shall be deemed available to the institutionalized spouse.

(b) Attribution of income. In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined to be eligible for medical assistance, except as otherwise provided in this section and regardless of any state laws relating to community property or the division of marital property, the provisions of Section 1924(b)(2)(A), (B), (C), and (D) of the Social Security Act, as amended, shall be applicable.

(4) Provisions for treatment of resources. The following resource provisions shall be applicable:

(a) Attribution of resources at time of initial eligibility determinations. In determining the resources of an institutionalized spouse at the time of application for benefits under Medicaid, regardless of any state laws relating to community property or the division of marital property, except as provided in paragraph (b) of this subsection, all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse.

(b) Nonattributed resources. The following protected amounts shall be deducted from couples' combined countable resources at time of determination of initial eligibility of the institutionalized spouse:

1. The state spousal resource standard; and if applicable

2. Additional amounts transferred under a court support order; or, if applicable

3. An additional amount designated by a hearing officer.

(c) Exceptions to resource ineligibility by assignment of support rights. The institutionalized spouse shall not be ineligible by reason of resources determined under paragraphs (a) and (b) of this subsection to be available for the cost of care in the following circumstances:

1. When the institutionalized spouse has assigned to the cabinet any rights to support from the community spouse;

2. When the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the state has the right to bring a support proceeding against a community spouse without such assignment; or

3. When the cabinet determines that denial of eligibility would work an undue hardship.

(d) Separate treatment of resources after eligibility for benefits established. During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for Medicaid benefits, no resources of the community spouse shall be deemed available to the institutionalized spouse. Resources of the institutionalized spouse protected for the needs of the community spouse but not transferred to the community spouse by the time of the second regularly scheduled redetermination of eligibility (i.e., one (1) year from the month of the initial determination of eligibility) shall be considered available to the institutionalized spouse.

(e) Excess value of an automobile. The equity value of an automobile in excess of prescribed limits which would otherwise be considered available is not included as a countable resource.

(5) Protecting income for the community spouse. The following provisions are applicable with regard to protecting income for the community spouse:

(a) The following allowances are to be offset from income of an institutionalized spouse. After an institutionalized spouse is determined to be eligible for Medicaid, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

1. A personal needs allowance of forty (40) dollars;

2. A community spouse monthly income allowance, but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse;

3. A family allowance determined in accordance with the definition of other family members maintenance standard; and

4. Amounts for incurred expenses for medical or remedial care for the institutionalized spouse.

(b) Establishment of the community spouse maintenance standard. The community spouse maintenance standard is set at $1,500 per month,

to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved; the maintenance standard may be increased for an individual, as appropriate, by a hearing officer.

(c) Court ordered support. If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall not be less than the amount of the monthly income so ordered.

(6) Permitting transfer of resources to community spouse. The following provisions shall be applicable with regard to transfers of resources from an institutionalized spouse.

(a) Permitted transfer. An institutionalized spouse may, without regard to the usual prohibition against disposal of assets for less than fair market value, transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount equal to the community spouse resource allowance, but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer shall be made as soon as practicable after the initial determination of eligibility, taking into account such time as may be necessary to obtain a court order under paragraph (c) of this subsection.

(b) Establishment of the community spouse resource allowance. The community spouse resource allowance is set at $60,000, to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved; for an individual, the allowance may be a higher amount established by a hearing officer, or a higher amount transferred under a court order as specified in paragraph (c) of this subsection.

(c) Transfers under court orders. As specified in Section 1924 (f)(3) of the Social Security Act, as amended, if a court has entered an order against an institutionalized spouse for the support of a community spouse, the usual prohibition against disposal of assets for less than fair market value shall not apply to amounts of resources transferred pursuant to such order for the support of the spouse of a family member.

(7) Requirement for notice and fair hearings. The following notice and fair hearings requirements are applicable:

(a) Notice. Upon a determination of eligibility for Medicaid of an institutionalized spouse or a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse, the cabinet shall notify both spouses (if upon determination of Medicaid eligibility of the institutionalized spouse) or the spouse making the request (if that is the situation) of the amount of the community spouse monthly income allowance, of the amount of any family allowance, of the method for computing the amount of the community spouse resources allowance, and of the spouse's right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

(b)1. Fair hearings. Both the institutionalized spouse and community spouse are entitled to a fair hearing if dissatisfied with the determination of the following:

a. The community spouse monthly income allowance;

b. The amount of monthly income determined to be otherwise available to the community spouse;

c. The attribution of resources at time of initial eligibility determination; or

d. The determination of the community spouse resource allowance.

2. Revision of monthly maintenance needs allowance. If either the institutionalized spouse or community spouse establishes during the hearing that the community spouse needs income, above the level otherwise provided by the monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the monthly maintenance needs allowance otherwise provided for, an amount adequate to provide such additional income as is necessary.

3. Revision of community spouse resource allowance. If either spouse establishes during the hearing process that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance otherwise allowed, an amount adequate to provide such a monthly maintenance needs allowance.

Section 22. Effective Dates. Except as specified in Section 11(3)(c) of this regulation, the provisions of this regulation, as amended, shall be effective with regard to determinations of eligibility made on or after October 1, 1989.

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: September 26, 1989
FILED WITH LRC: November 2, 1989 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:012E

This emergency administrative regulation is being amended to make a technical correction to clarify that the exception to the maximum days limit for medically necessary inpatient hospital services furnished to infants under age one (1) relates only to stays in disproportionate share hospitals. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on July 14, 1989 as this regulation has the words "in a disproportianate share hospital as defined in 907 KAR 1:013, Payments for hospital inpatient services," added in the exception to the maximum hospital stay limit. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about October 13, 1989.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:012E. Inpatient hospital services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: October 26, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to inpatient hospital services for which payment shall be made by the Medical Assistance program in behalf of both the categorically needy and the medically needy.

Section 1. Length of Stay. Inpatient hospital services except for services in an institution for treatment of tuberculosis or mental diseases shall be limited to a maximum of fourteen (14) days per admission, with the further exception that effective with regard to medically necessary services provided on or after July 1, 1989 to infants under age one (1) in a disproportionate share hospital as defined in 907 KAR 1:013, Payments for hospital inpatient services, there shall be no limit on the duration of stay or number of admissions. A recipient may transfer from one (1) hospital to another hospital when the transfer is necessary for the patient to receive medical care which is not available in the first hospital. These transfers and admissions shall begin anew the fourteen (14) day per admission limitation; in such situations, the maximum covered inpatient hospital stay that may result is a total of twenty-eight (28) days for the two (2) admissions. Each admission shall have prior approval of appropriateness by the designated peer review organization in order for the admission to be covered under the program; this requirement does not apply for emergency admissions. Weekend stays associated with a Friday or Saturday admission will not be reimbursed unless an emergency exists.

Section 2. Covered Admissions. Admissions for which payment is made shall be limited to those primarily indicated in the management of acute or chronic illness, injury or impairment, or for maternity care that could not be rendered on an outpatient basis. Admissions relating to only observation or diagnostic purposes shall not be covered. Cosmetic surgery shall not be covered except as required for prompt repair of accidental injury or for the improvement of the functioning of a malformed or diseased body member.

Section 3. Inpatient Hospital Services not Covered by the Medical Assistance Program. (1) Those services which are not medically necessary to the patient's well-being, such as television, telephone and guest meals.

(2) Private duty nursing.

(3) Those supplies, drugs, appliances, and equipment which are furnished to the patient for use outside the hospital unless it would be considered unreasonable or impossible from a medical standpoint to limit the patient's use of the item to the periods during which he is an inpatient.

(4) Those laboratory tests not specifically ordered by a physician and not done on a preadmission basis unless an emergency exists.

(5) Private accommodations unless medically necessary and so ordered by the attending physician.

(6) The following listed surgical procedures, except when a life-threatening situation exists, there is another primary purpose for the admission, or the admitting physician certifies a medical necessity requiring admission to a hospital:

(a) Biopsy: breast, cervical node, cervix, lesions (skin, subcutaneous, submucous), lymph node (except high axillary excision, etc), and muscle.

(b) Cauterization or cryotherapy: lesions (skin, subcutaneous, submucous), moles, polyps, warts/condylomas, anterior nose bleeds, and cervix.

(c) Circumcision.

(d) Dilation: dilation and curettage (diagnostic and/or therapeutic nonobstetrical); dilation/probing of lacrimal duct.

(e) Drainage by incision or aspiration: cutaneous, subcutaneous, and joint.

(f) Exam under anesthesia (pelvic).

(g) Excision: bartholin cyst, condylomas, foreign body, lesions lipoma, nevi (moles), sebaceous cyst, polyps, and subcutaneous fistulas.

(h) Extraction: foreign body, and teeth (per existing policy).

(i) Graft, skin (pinch, splint or full thickness up to defect size three-fourths (3/4) inch diameter).

(j) Hymenotomy.

(k) Manipulation and reduction with or without x-ray; cast change: dislocations depending upon the joint and indication for procedure, and fractures.

(l) Meatotomy/urethral dilation, removal calculus and drainage of bladder without incision.

(m) Myringotomy with or without tubes, otoplasty.

(n) Oscopy with or without biopsy (with or without salpingogram): arthroscopy, bronchoscopy, colonoscopy, culdoscopy, cystoscopy, esophagoscopy, endoscopy, gastroscopy, hysteroscopy, laryngoscopy, laparoscopy, peritoneoscopy, otoscopy, and sigmoidoscopy or procto sidmoidoscopy.

(o) Removal; IUD, and fingernail or toenails.

(p) Tenotomy hand or foot.

(q) Vasectomy.

(r) Z-plasty for relaxation of scar/contracture.

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: October 10, 1989
FILED WITH LRC: October 26, 1989 at 9 a.m.

REGULATIONS AS AMENDED BY ADMINISTRATIVE BODY AND REVIEWING SUBCOMMITTEE

REVENUE CABINET
Department of Administrative Services
(As Amended)

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 statutory and regulatory requirements [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.

FINANCE AND ADMINISTRATION CABINET
Board of Registration for Professional
Engineers and Land Surveyors
(As Amended)

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. (1) [The term] "Boundary survey" [shall] means 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.

(2) "Witness monumentation" means the setting of an offset monument.

Section 2. (1) The perimeter of a parsel or tract of land shall [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.

(2) The land surveyor's marks on the ground shall constitute the actual survey. While not constituting the actual survey, field notes, drawings and descriptions shall constitute the written record of the land surveyor's work.

(3) Any document purporting to represent a boundary survey shall conform to the minimum standard of practice in boundary surveying established by this administrative regulation. Failure to comply may constitute misconduct, gross negligence or incompetence in the practice of land surveying. [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 3. [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 4. [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 5. [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 6. [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" **shall be** [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 **shall** [should] be placed "on line" if possible and shall be shown on plats and called for in descriptions.

Section 7. [6.] (1) Documentation [(descriptions, plats, etc.)]. The monuments noted and left by the land surveyor **shall** constitute the actual boundary survey, **although** [.] [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 **shall** [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 **shall** [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 **shall** [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 8. [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.

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

401 KAR 31:040. Lists of hazardous wastes.

RELATES TO: KRS 224.830 through 224.877, 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.864(3), 224.867
NECESSITY AND FUNCTION: KRS 224.864(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This regulation establishes the lists of hazardous wastes.

Section 1. General Applicability and Delisting Procedures. (1) A waste is a hazardous waste if it is listed in any section of this regulation unless it has been excluded from that list under 401 KAR 31:060 and 31:070.

(2) The cabinet shall [will] indicate the basis for listing the classes or types of wastes listed in this regulation by employing one (1) or more of the following Hazard Codes:

Hazard Code	Class or Type of Waste
(I)	Ignitable waste
(C)	Corrosive waste
(R)	Reactive waste
(E)	EP toxic waste
(H)	Acute hazardous waste
(T)	Toxic waste

401 KAR 31:160 identifies the constituent which caused the cabinet to list the waste as an EP toxic waste (E) or toxic waste (T) in Sections 2 and 3 of this regulation.

(3) Each hazardous waste listed in this regulation is assigned an EPA Hazardous Waste Number, which precedes the name of the waste. This number shall [must] be used in complying with the notification requirements of KRS 224.864 and certain recordkeeping and reporting requirements under 401 KAR Chapters 32 through 40.

(4) The following hazardous wastes listed in Section 2 or 3 of this regulation are subject to the exclusion limits for acutely hazardous wastes established in Section 5 of 401 KAR 31:010: EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

Section 2. Hazardous Wastes from Nonspecific Sources. Hazardous wastes from nonspecific sources are:

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
Generic:		
F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, orthodichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above halogenated solvents or those solvents listed in F001, F004, and F005; and the still bottoms from the recovery of these spentsolvents and spent solvent mixtures.	(T)
F003	The following spent nonhalogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent nonhalogenated solvents; and all spent solvent mixtures/blends containing, before use, one (1) or more of the above nonhalogenated solvents, and, a total of ten (10) percent or more (by volume) of one (1) or more of those	(I)*

	solvents listed in F001, F002, F004, and F005; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures.	
F004	The following spent nonhalogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents or those solvents listed in F001, F002, and F005; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F005	The following spent nonhalogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents, or those solvents listed in F001, F002, and F004; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I,T)
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	(T)
F007	Spent cyanide plating bath solutions from electroplating operations.	(R,T)
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	(R,T)
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	(R,T)
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	(R,T)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	(R,T)
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	(T)
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum.	(T)
F020	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)
F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives.	(H)
F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.	(H)
F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)
F024	Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor clean-out wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one (1) to five (5), utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent desiccants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in Section 2 of this regulation.)	(T)
F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.	(H)
F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does	(H)

	not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.)	
F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.	(T)

* (I,T) shall [should] be used to specify mixtures containing ignitable and toxic constituents.

Section 3. Hazardous Wastes from Specific Sources. Hazardous wastes from specific sources are:

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
Wood Preservation:		
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote [and/]or pentachlorophenol.	(T)
Inorganic Pigments:		
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	(T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	(T)
K005	Wastewater treatment sludge from the production of chrome green pigments.	(T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).	(T)
K007	Wastewater treatment sludge from the production of iron blue pigments.	(T)
K008	Oven residue from the production chrome oxide green pigments.	(T)
Organic Chemicals:		
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	(R,T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	(R,T)
K014	Bottoms from the acetoniltrile purification column in the production of acrylonitrile.	(T)
K015	Still bottoms from the distillation of benzyl chloride.	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	(T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	(T)
K018	Heavy ends from the fractionation column in ethyl chloride production.	(T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	(T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	(T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	(T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	(T)
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	(T)
K093	Distillation light ends from the production of phthalic anhydride from orthoxylene.	(T)
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	(T)
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	(T)
K026	Stripping still tails from the production of methy ethyl pyridines.	(T)
K027	Centrifuge and distillation residues from toluene diisocyanate production.	(R,T)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	(T)
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	(T)
K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	(T)
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	(T)
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloro-ethylene.	(T)
K083	Distillation bottoms from aniline production.	(T)
K103	Process residues from aniline extraction from the production of aniline.	(T)
K104	Combined wastewater streams generated from nitrobenzene/ aniline production.	(T)
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	(T)
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	(T)
K111	Product wash waters from the production of dinitrotoluene via nitration of toluene.	(C,T)
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K113	Condensed liquid light ends from	(T)

	the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	(T)
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	(T)
K118	Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)

Inorganic Chemicals:

K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.	(T)
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	(T)
K106	Wastewater treatment sludge from the mercury cell process in chlorine production.	(T)

Pesticides:

K031	By-product salts generated in the production of MSMA and cacodylic acid.	(T)
K032	Wastewater treatment sludge from the production of chlordane.	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	(T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	(T)
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	(T)
K035	Wastewater treatment sludges generated in the production of creosote.	(T)
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	(T)
K037	Wastewater treatment sludges from the production of disulfoton.	(T)
K038	Wastewater from the washing and stripping of phorate production.	(T)
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	(T)
K040	Wastewater treatment sludge from the production of phorate.	(T)
K041	Wastewater treatment sludge from the production of toxaphene.	(T)
K098	Untreated process wastewater from the production of toxaphene.	(T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	(T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	(T)
K099	Untreated wastewater from the production of 2,4-D.	(T)
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	(T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	(C,T)
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	(T)
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	(T)

Explosives:

K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	(R)
K045	Spent carbon from the treatment of wastewater containing explosives.	(R)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	(T)
K047	Pink/red water from TNT operations.	(T)

Petroleum Refining:

K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	(T)
K049	Slop oil emulsion solids from the petroleum refining industry.	(T)
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	(T)
K051	API separator sludge from the petroleum refining industry.	(T)
K052	Tank bottoms (leaded) from the petroleum refining industry.	(T)

Iron and Steel:

K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	(T)
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	(C,T)

Primary Copper:

K064	Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production.	(T)

Primary Lead:		
K065	Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities.	(T)
Primary Zinc:		
K066	Sludge from treatment of process wastewater or acid plant blowdown from primary zinc production.	(T)
Primary Aluminum:		
K088	Spent potliners from primary aluminum reduction.	(T)
Ferroalloys:		
K090	Emission control dust or sludge from ferrochromiumsilicon production.	(T)
K091	**Emission control dust or sludge from ferrochromium production.**	**(T)**

The listing of wastes K064, K065, K066, K088, K090 and K091 as hazardous wastes shall become applicable to persons who generate or manage such wastes six (6) months after the effective date of this regulation.

Secondary Lead:		
K069	Emission control dust/sludge from secondary lead smelting.	(T)
K100	Waste leaching solution from acid leaching of emission control dust/ sludge from secondary lead smelting.	(T)
Veterinary Pharmaceuticals:		
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds.	(T)
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds.	(T)
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds.	(T)
Ink Formulation:		
K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	(T)
Coking:		
K060	Ammonia still lime sludge from coking operations.	(T)
K087	Decanter tank tar sludge from coking operations.	(T)

Section 4. Discarded Commercial Chemical Products, Off-specification Species, Container Residues, and Spill Residues Thereof. The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Section 2(1)(b)1 of 401 KAR 31:010, when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

(1) Any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of this section.

(2) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (5) or (6) of this section.

(3) Any residue remaining in a container or in an inner liner removed from a container that has held [been used to hold] any commercial chemical product or manufacturing chemical intermediate having the generic names listed in subsection (5) of this section, unless the [or any] container is empty as defined in Section 7(2)(c) of 401 KAR 31:010. [or inner liner removed from a container that has been used to hold any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (5) of this section unless:]

[(a) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate; or]

[(b) The container or inner liner has been cleansed by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or]

[(c) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.]

(4) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of this section, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any off-specification chemical intermediate which, if it met specification, would have the generic name listed in subsection (5) or (6) of this section.

(5) The commercial chemical products, manufacturing chemical intermediate or off-specification commercial chemical products referred to in subsections (1) through (4) of this section, are identified as acute hazardous wastes (H) and are subject to the limited quantity generator exclusion defined in Section 5 of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound is only listed for acute toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance	Chemical Abstracts No.
P023	Acetaldehyde, chloro-	107-20-0
P002	Acetamide, N-(Aminothioxo-methyl)-	591-08-2
P057	Acetamide, 2-fluoro-	640-19-7
P058	Acetic acid, fluoro-, sodium salt	62-74-8
[P066	Acetimidic acid, N-((methyl-carbamoyl)-oxy)thio-, methyl ester]	16752-77-5
P001	3-(alpha-acetonyl-benzyl)-4-hydroxycoumarin and salts, when present at concentrations greater than 0.3%	81-81-2
P002	1-acetyl-2-thiourea	591-08-2
P003	Acrolein	107-02-8
P070	Aldicarb	116-06-3
P004	Aldrin	309-00-2
P005	Allyl alcohol	107-18-6
P006	Aluminum phosphide (R,T)	20859-73-8
P007	5-(aminomethyl)-3-isoxazolol	2763-96-4
P008	4-[alpha-]Aminopyridine	504-24-5
P009	Ammonium picrate (R)	131-74-8
P119	Ammonium vanadate	7803-55-6
P099	Argentate (1-), bis(cyano-C)-, potassium	506-61-6
P010	Arsenic acid H_3AsO_4	7778-39-4
P012	Arsenic oxide As_2O_3	1327-53-3
P011	Arsenic oxide As_2O_5	1303-28-2
P011	Arsenic pentroxide	1303-28-2
P012	Arsenic trioxide	1327-53-3
P038	Arsine, diethyl	692-42-2
P036	Arsonous dichloride, phenyl-	696-28-6
P054	Aziridine	151-56-4
P067	Aziridine, 2-methyl-	75-55-8
P013	Barium cyanide	542-62-1
P024	Benzenamine, 4-chloro-	106-47-8
P077	Benzenamine, 4-nitro-	100-01-6
P028	Benzene, (chloromethyl)-	100-44-7
P042	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)-	51-43-4
P046	Benzeneethanamine, alpha, alpha-dimethyl-	122-09-8
P014	Benzenethiol	108-98-5
P001	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, and salts when present at concentrations greater than 0.3%	'81-81-2
P028	Benzyl chloride	100-44-7
P015	Beryllium [dust]	7440-41-7
[P016	Bis(chloromethyl) ether	542-88-1]
P017	Bromoacetone	598-31-2
P018	Brucine	357-57-3
P045	2-Butanone, 3,3-dimethyl-1-(Methylthio)-,O-(methylamino) carbonyl) oxime	39196-18-4
P021	Calcium cyanide	592-01-8
P021	Calcium cyanide $Ca(CN)_2$	592-01-8
[P022	Carbon bisulfide	75-15-0]
P022	Carbon disulfide	75-15-0
P095	Carbonic dichloride	75-44-5
P023	Chloroacetaldehyde	107-20-0
P024	p-Chloroaniline	106-47-8
P026	1-(o-Chlorophenyl)thiourea	5344-82-1
P027	3-Chloropropionitrile	542-76-7
P029	Copper cyanide	544-92-3
P029	Copper cyanide Cu(CN)	544-92-3
P030	Cyanides (soluble cyanide salts), not otherwise specified	--------
P031	Cyanogen	460-19-5
P033	Cyanogen chloride	506-77-4
P033	Cyanogen chloride (CN)Cl	506-77-4
P034	2-Cyclohexyl-4,6-dinitrophenol	131-89-5
P016	Dichloromethyl ether	542-88-1
P036	Dichlorophenylarsine	696-28-6
P037	Dieldrin	60-57-1
P038	Diethylarsine	692-42-2
P041	Diethyl-p-nitrophenyl phosphate	311-45-5
P040	O,O-Diethyl O-pyrazinyl phosphorothioate	297-97-2
P043	Diisopropyl fluorophosphate (DFP)	55-91-4
P004	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a- hexahydro-, (1alpha, 4alpha, 4abeta, 5alpha, 8alpha, 8abeta)-	309-00-2
P060	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a- hexahydro-, (1alpha, 4alpha, 4abeta, 5beta, 8beta, 8abeta)-	465-73-6
P037	2,7:3,6-Dimethanonaphth(2,3-b) oxirene,3,4,5,6,9,9-hexa-chloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha, 2beta, 2aalpha, 3beta, 6beta, 6aalpha, 7beta, 7aalpha)-	60-57-1
P051	2,7:3,6-Dimethanonaphth(2,3-b),oxirene, 3,4,5,6,9,9-hexa-chloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha, 2beta, 2abeta,3alpha, 6alpha, 6abeta,7beta, 7aalpha)-, and metabolites	72-20-8
P044	Dimethoate	60-51-5
[P045	3,3-Dimethyl-1-(methylthio)-2-butanone, O-((methylamino)-carbonyl) oxime]	39196-18-4
P046	alpha, alpha-Dimethylphenethy lamine	122-09-8
P047	4,6-Dinitro-o-cresol and salts	'534-52-1
P048	2,4-Dinitrophenol	51-28-5
P020	Dinoseb	88-85-7
P085	Diphosphoramide, octamethyl-	152-16-9
P111	Diphosphoric acid, tetraethyl ester	107-49-3
P039	Disulfoton	298-04-4
P049	[2,4-]Dithiobiuret	541-53-7
P050	Endosulfan	115-29-7
P088	Endothal	145-73-3
P051	Endrin	72-20-8
P051	Endrin, and metabolites	72-20-8
P042	Epinephrine	51-43-4
P031	Ethanedinitrile	460-19-5
P066	Ethanimidothioic acid, N-(((methylamino)car-bonyl) oxy)-,methyl ester	16752-77-5
P101	Ethyl cyanide	107-12-0
P054	Ethylenimine	151-56-4
P097	Famphur	52-85-7
P056	Fluorine	7782-41-4
P057	Fluoroacetamide	640-19-7
P058	Fluoroacetic acid, sodium salt	62-74-8
P065	Fulminic acid, mercury (2+) salt (R,T)	628-86-4
P059	Heptachlor	76-44-8
[P060	Hexachlorohexahydro-endo,endo-dimethanonaphthalene]	465-73-6
P062	Hexaethyl tetraphosphate	757-58-4
P116	Hydrazinecarbothioamide	79-19-6
P068	Hydrazine, methyl	60-34-4
P063	Hydrocyanic acid	74-90-8
P063	Hydrogen cyanide	74-90-8

P096	Hydrogen phosphide	7803-51-2
[P064	Isocyanic acid, methyl ester	624-83-9]
P060	Isodrin	465-73-6
P007	3(2H)-Isoxazolone,5-(amino-methyl)-	2763-96-4
P092	Mercury, (acetato-O) phenyl-	62-38-4
P065	Mercury fulminate (R,T)	628-86-4
P082	Methanamine,N-methyl-N-nitroso-	62-75-9
P064	Methane, isocyanato-	624-83-9
P016	Methane, oxybis (chloro-	542-88-1
P112	Methane, tetranitro-(R)	509-14-8
P118	Methanethiol, trichloro-	75-70-7
P050	6,9-Methano-2,4,3-benzodio-xathiepen, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-,3-oxide	115-29-7
P059	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8
P066	Methomyl	16752-77-5
[P067	2-Methylaziridine	75-55-8]
P068	Methyl hydrazine	60-34-4
P064	Methyl isocyanate	624-83-9
P069	2-Methyllactonitrile	75-86-5
P071	Methyl parathion	298-00-0
P072	alpha-Naphthylthiourea	86-88-4
P073	Nickel carbonyl	13463-39-3
P073	Nickel carbonyl $Ni(CO)_4$ (T-4)-	13463-39-3
P074	Nickel Cyanide	557-19-7
P074	Nickel cyanide $Ni(CN)_2$	557-19-7
P075	Nicotine and salts	'54-11-5
P076	Nitric oxide	10102-43-9
P077	p-Nitroaniline	100-01-6
P078	Nitrogen dioxide	10102-44-0
P076	Nitrogen oxide NO	10102-43-9
P078	Nitrogen oxide NO_2	10102-44-0
P081	Nitroglycerine (R)	55-63-0
P082	N-Nitrosodimethylamine	62-75-9
P084	N-Nitrosomethylvinylamine	4549-40-0
P074	Nickel cyanide	557-19-7
P085	Octamethylpyrophosphoramide	152-16-9
P087	Osmium oxide OsO_4, (T-4)-	20816-12-0
P087	Osmium tetroxide	20816-12-0
P088	7-Oxabicyclo (2.2.1)heptane-2,3-dicarboxylic acid	145-73-2
P089	Parathion	56-38-2
P034	Phenol, 2-cyclohexyl-4, 6-dinitro-	131-89-5
P048	Phenol, 2, 4-dinitro	51-28-5
P047	Phenol, 2-methyl-4,6-dinitro- and salts	534-52-1
P020	Phenol, 2-(1-methylpropyl)-4, 6-dinitro-	88-85-7
P009	Phenol, 2,4,6-trinitro-, ammonium salt (R)	131-74-8
P092	Phenylmercury acetate	62-38-4
P093	Phenylthiourea	103-85-5
P094	Phorate	298-02-2
P095	Phosgene	75-44-5
P096	Phosphine	7803-51-2
P041	Phosphoric acid, diethyl 4-nitrophenyl ester	311-45-5
P039	Phosphorodithioic acid, 0,0-diethyl S-(2-(ethylthio)ethyl) ester	298-04-4
P094	Phosphorodithioic acid, 0,0-diethyl S-((ethylthio)methyl) ester	298-02-2
P044	Phosphorodithioic acid, 0, 0-dimethyl S-(2(methylamino)-2-oxoethyl) ester	60-51-5
P043	Phosphorofluoric acid, bis (1-methylethyl) ester	55-91-4
P089	Phosphorothioic acid, 0, 0-diethyl O-(4[p]-nitrophenyl) ester	56-38-2
P040	Phosphorothioic acid, 0, 0-diethyl O-pyrazinyl ester	297-97-2
P097	Phosphorothioic acid, 0-(4-((dimethylamino) sulfonyl) phenyl) 0,0-dimethyl ester	52-85-7
P071	Phosphorothioic acid, 0,0-dimethyl 0-(4-nitrophenyl) ester	298-00-0
P110	Plumbane, tetraethyl-	78-00-2
P098	Potassium cyanide	151-50-8
P098	Potassium cyanide K(CN)	151-50-8
P099	Potassium silver cyanide	506-61-6
P070	Propanal, 2-methyl-2-(methylthio)-,0-((methylamino)carbonyl)oxime	116-06-3
P101	Propanenitrile	107-12-0
P027	Propanenitrile, 3-chloro-	542-76-7
P069	Propanenitrile, 2-hydroxy-2-methyl-	75-86-5
P081	1,2,3-Propanetriol, trinitrate-(R)	55-63-0
P017	2-Propanone, 1-bromo-	598-31-2
P102	Propargyl alcohol	107-19-7
P003	2-Propenal	107-02-8
P005	2-Propen-1-ol	107-18-6
P067	1,2-Propylenimine	75-55-8
P102	2-Propyn-1-ol	107-19-7 [591-08-2]
P008	4-Pyridinamine	504-24-5
P075	Pyridine, [(S)-]3-(1-methyl-2-pyrrolidinyl)-,(S)-, and salts	'54-11-5
[P111	Pyrophosphoric acid, tetraethyl ester]	107-49-3
P103	Selenourea	630-10-4
P104	Silver cyanide	506-64-9
P104	Silver cyanide Ag(CN)	506-64-9
P105	Sodium azide	26628-22-8
P106	Sodium cyanide	143-33-9
P106	Sodium cyanide Na(CN)	143-33-9
P107	Strontium sulfide	1314-96-1
P107	Strontium sulfide SrS	1314-96-1
P108	Strychnidin-10-one, and salts	'57-24-9
P018	Strychnidin-10-one, 2, 3-dimethoxy	357-57-3
P108	Strychnine and salts	'57-24-9
P115	Sulfuric acid, dithallium (1+[I])salt	7446-18-6 [10031-59-1]
P109	Tetraethyldithiopyrophosphate	3689-24-5
P110	Tetraethyl lead	78-00-2
P111	Tetraethylpyrophosphate	107-49-3
P112	Tetranitromethane (R)	509-14-8
P062	Tetraphosphoric acid, hexaethyl ester	757-58-4
P113	Thallic oxide	1314-32-5
P113	Thallium [(III)] oxide Tl_2O_3	1314-32-5
P114	Thallium (I) selenite	12039-52-0
P115	Thallium (I) sulfate	7446-18-6 [10031-59-1]
P109	Thiodiphosphoric acid, tetraethyl ester	3689-24-5
P045	Thiofanox	39196-18-4
P049	Thioimidodicarbonic diamide $((H_2N)c(S))_2NH$	541-53-7
P014	Thiophenol	108-98-5
P116	Thiosemicarbazide	79-19-6
P026	Thiourea, (2-chlorophenyl)-	5344-82-1
P072	Thiourea, 1-naphthalenyl-	86-88-4
P093	Thiourea, phenyl-	103-85-5
P123	Toxaphene	8001-35-2
P118	Trichloromethanethiol	75-70-7
P119	Vanadic acid, ammonium salt	7803-55-6

P120	Vanadium [(V)] oxide V_2O_5	1314-62-1
P120	Vanadium pentoxide	1314-62-1
P084	Vinylamine, N-methyl-N-nitroso-	4549-40-0
P001	Warfarin, and salts when present at concentrations greater than 0.3% [or in unknown concentrations]	'81-81-2
P121	Zinc cyanide	557-21-1
P121	Zinc cyanide Zn $(CN)_2$	557-21-1
P122	Zinc phosphide Zn_3P_2 [(R,T)], when present at concentrations greater than 10% (R,T) 'CAS number given for parent compound only [or in unknown concentrations]	1314-84-7

(6) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in subsections (1) through (4) of this section, are identified as toxic wastes (T), unless otherwise designated and are subject to the limited quantity generator exclusion defined in Section 5(1), (6), and (7) of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance	Chemical Abstracts No.
U001	Acetaldehyde (I)	75-07-0
U034	Acetaldehyde, trichloro-	75-87-6
U187	Acetamide, N-(4-ethoxyphenyl)-	62-44-2
U005	Acetamide, N-9H-fluoren-2-yl-	53-96-3
U240	Acetic acid, (2,4-dichlorophenoxy)-, salts and esters	'94-75-7
U112	Acetic acid ethyl ester (I)	141-78-6
U144	Acetic acid, lead (2+) salt	301-04-2
U214	Acetic acid, thallium (1+) salt	563-68-8
See F027		
[U232]	Acetic acid, (2,4,5-trichlorophenoxy)-	93-76-5
U002	Acetone (I)	67-64-1
U003	Acetonitrile (I,T)	75-05-8
U004	Acetophenone	98-86-2
U005	2-Acetylaminofluorene	53-96-3
U006	Acetyl chloride (C,R,T)	75-36-5
U007	Acrylamide	79-06-1
U008	Acrylic acid (I)	79-10-7
U009	Acrylonitrile	107-13-1
U011	Amitrole	61-82-5
U012	Aniline (I,T)	62-53-3
U136	Arsinic acid, dimethyl-	75-60-5
U014	Auramine	492-80-8
U015	Azaserine	115-02-6
U010	Azirino (2',3':3,4) pyrrolo (1,2-a) indole-4, 7-dione, 6-amino-8-(((aminocarbonyl) oxy) methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, (1aS- (1aalpha, 8beta, 8aalpha, 8balpha))-	50-07-7
U157	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-	56[0]-49-5
U016	[3,4-]Benz(c)acridine	225-51-4
U017	Benzal chloride	98-87-3
U192	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950-58-5
U018	[1,2-]Benz(a)anthracene	56-55-3
U094	Benz(a)anthracene, 7,12-dimethyl-	57-97-6
U012	Benzenamine (I,T)	62-53-3
U014	Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	492-80-8
U049	Benzenamine, 4-chloro-2-methyl-,hydrochloride	3165-93-3
U093	Benzenamine, N, N-dimethyl-4-(phenylazo-)	60-11-7
U328	Benzenamine, 2-methyl-	95-53-4
U353	Benzenamine, 4-methyl-	106-49-0
U158	Benzenamine, 4,4'-methylenebis (2-chloro-	101-14-4
U222	Benzenamine, 2-methyl-, hydrochloride	636-21-5
U181	Benzenamine, 2-methyl-5-nitro	99-55-8
U019	Benzene (I,T)	71-43-2
U038	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy, ethyl ester	510-15-6
U030	Benzene, 1-bromo-4-phenoxy-	101-55-3
U035	Benzenebutanoic acid, 4-(bis (2-chloroethyl)amino)-	305-03-3
U037	Benzene, chloro-	108-90-7
U221	Benzenediamine, ar-methyl-	25376-45-8
U028	1,2-Benzenedicarboxylic acid, bis(2-ethylhexy) ester	117-81-7
U069	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2
U088	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2
U102	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3
U107	1,2-Benzenedicarboxylic acid, di[-n-]octyl ester	117-84-0
U070	Benzene, 1,2-dichloro-	95-50-1
U071	Benzene, 1,3-dichloro-	541-73-1
U072	Benzene, 1,4-dichloro-	106-46-7
U060	Benzene, 1,1'-(2,2-dichloroethylidene)bis(4-chloro-	72-54-8
U017	Benzene, (dichloromethyl)-	98-87-3
U223	Benzene, 1,3-diisocyanatomethyl- (R,T)	26471-62-5
U239	Benzene, dimethyl- (I,T)	1330-20-7
U201	1,3-Benzenediol	106-46-3
U127	Benzene, hexachloro-	118-74-1
U056	Benzene, hexahydro (I)-	110-82-7
U220	Benzene, methyl-	108-88-3
U105	Benzene, 1-methyl-2, 4-dinitro-	121-14-2
U106	Benzene, 2-methyl-1,3-dinitro-	606-20-2
U055	Benzene, (1-methylethyl),(I)	98-82-8
U169	Benzene, nitro- [(I,T)]	98-95-3
U183	Benzene, pentachloro-	608-93-5
U185	Benzene, pentachloronitro-	82-68-8
U020	Benzenesulfonic acid chloride (C,R)	98-09-9
U020	Benzenesulfonyl chloride (C,R)	98-09-9
U207	Benzene, 1,2,4,5-tetrachloro-	95-94-3
U061	Benzene),1,1'-(2,2,2-trichloroethylidene)bis(4-chloro-	50-29-3
U247	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-methoxy-	72-43-5
U023	Benzene, (trichloromethyl)- [(C,R,T)]	98-07-7
U234	Benzene, 1,3,5-trinitro- [(R,T)]	99-35-4
U021	Benzidine	92-87-5
[U202	1,2-Benzisothiazilin-3-one,1, 1-dioxide, and salts]	81-07-2

U202	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide and salts	81-07-02
U203	1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7
U141	1,3-Benzodioxole, 5-(1-propenyl)-	120-58-1
U090	1,3-Benzodioxole, 5-propyl-	94-58-6
U064	Benzo(rst)pentaphene	189-55-9
U248	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenol-butyl)-, and salts, when present at concentrations of 0.3% or less	81-81-2
U022	Benzo(a)pyrene	50-32-8
U197	p-Benzoquinone	106-51-4
U023	Benzotrichloride (C,R,T)	98-07-7
U085	2,2'-Bioxirane [(I,T)]	1464-53-5
U021	(1,1-Biphenyl)-4,4'-diamine	92-87-5
U073	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-	91-94-1
U091	(1,1'-Biphenyl)-4,4'-diamine, 3,3',dimethoxy-	119-90-4
U095	(1,1'-Biphenyl)-4,4'-diamine, 3,3',dimethyl-	119-93-7
[U027	Bis(2-chloroisopropyl) ether	39638-32-9
U024	Bis(2-chloromethoxy) ethane	111-91-1
U028	Bis(2-ethyhexyl) phthalate	117-81-7]
U225	Bromoform	75-25-2
U030	4-Bromophenyl phenyl ether	101-55-3
U128	1,3-Butadiene,1,1,2,3,4,4-hexachloro-	87-68-3
U172	1-Butanamine, N.-butyl-N-nitroso	924-16-3
[U035	Butanoic acid, 4-(Bis(2-chloroethyl)amino benzene-]	305-03-3
U031	1-Butanol (I)	71-36-3
U159	2-Butanone (I,T)	78-93-3
U160	2-Butanone peroxide (R,T)	1338-23-4
U053	2-Butenal	4170-30-3
U074	2-Butene,1,4-dichloro- (I,T)	764-41-0
U143	2-Butenoic acid, 2-methyl-,7-((2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl)-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, (1S-(1alpha(Z),7(2S,3R),7aalpha))-	303-34-4
U031	n-Butyl alcohol (I)	71-36-3
U136	Cacodylic acid	75-60-5
U032	Calcium chromate	13765-19-0
U238	Carbamic acid, ethyl ester	51-79-6
U178	Carbamic acid, methylnitroso-, ethyl ester	615-53-2
U097	Carbamic chloride, dimethyl-	79-44-7
U114	Carbamodithioic acid, 1,2-ethanediylbis-, salts and esters	'111-54-6
U062	Carbamothioic acid, bis(1-methylethyl)-S-(2,3-dichloro-2-propenyl) ester	2303-16-4
U215	Carbonic acid, dithallium (1+) salt	6533-73-9
U033	Carbonic difluoride	353-50-4
U156	Carbonochloridic acid, methyl ester (I,T)	79-22-1
U033	Carbon oxyfluoride (R,T)	353-50-4
U211	Carbon tetrachloride	56-23-5
U034	Chloral	75-87-6
U035	Chlorambucil	305-03-3
U036	Chlordane, alpha and gamma isomers	57-74-9 [12789-03-6]
U026	Chlornaphazine	494-03-1
U037	Chlorobenzene	108-90-7
U038	Chlorobenzilate	510-15-6
U039	p-Chloro-m-cresol	59-50-7
[U041	1-Chloro-2,3-epoxypropane	106-89-8]
U042	2-Chlorethyl vinyl ether	110-75-8
U044	Chloroform	67-66-3
U046	Chloromethyl methyl ether	107-30-2
U047	beta-Chloronaphthalene	91-58-7
U048	o-Chlorophenol	95-57-8
U049	4-Chloro-o-toluidine, hydrochloride	3165-93-3
U032	Chromic acid H_2CrO_4, calcium salt	13765-19-0
U050	Chrysene	218-01-9
U051	Creosote	[8021-39-4]
U052	Cresols (Cresylic acid)	1319-77-3
U053	Crotonaldehyde	4170-30-3
U055	Cumene (I)	98-82-8
U246	Cyanogen bromide (CN) Br	506-68-3
U197	2,5-Cyclohexadiene-1,4-dione	106-51-4
U056	Cyclohexane (I)	110-82-7
U129	Cyclohexane 1,2,3,4,5,6,-hexachloro-(1alpha, 2alpha, 3beta, 4alpha, 5alpha, 6beta)-	58-89-9
U057	Cyclohexanone (I)	108-94-1
U130	1,3-Cyclopentadiene,1,2,3,4,5,5-hexachloro-	77-47-4
U058	Cyclophosphamide	50-18-0
U240	2,4-D, salts and esters	'94-75-7
U059	Daunomycin	20830-81-3
U060	DDD	72-54-8
U061	DDT	50-29-3
U062	Diallate	2303-16-4
U063	Dibenz(a,h) anthracene	53-70-3
U064	Dibenzo(a,i) pyrene	189-55-9
U066	1,2-Dibromo-3-chloropropane	96-12-8
U069	Dibutyl phthalate	84-74-2
U070	o-Dichlorobenzene	95-50-1
U071	m-Dichlorobenzene	541-73-1
U072	p-Dichlorobenzene	106-46-7
U073	3,3'-Dichlorobenzidine	91-94-1
U074	1,4-Dichloro-2-butene (I,T)	764-41-0
U075	Dichlorodifluoromethane	75-71-8
U078	1,1-Dichloroethylene	75-35-4
U079	1,2-Dichloroethylene	156-60-5
U025	Dichloroethyl ether	111-44-4
U027	Dichloroisoprophyl ether	108-60-1
U024	Dichloromethoxy ethane	111-91-1
U081	2,4-Dichlorophenol	120-83-2
U082	2,6-Dichlorophenol	87-65-0
[U240	2,4-Dichlorophenoxyacetic acid, salts and esters	94-75-7
U083	1,2-Dichloropropane	78-87-5]
U084	1,3-Dichloropropene	542-75-6
U085	1,2:3,4-Diepoxybutane (I,T)	1464-53-5
U108	1,4-Diethyleneoxide	123-91-1
U028	Diethylhexyl phthalate	117-81-7
U086	N, N-Diethylhydrazine	1615-80-1
U087	O, O-Diethyl-S-methyldithio-phosphate	3288-58-2
U088	Diethyl phthalate	84-66-2
U089	Diethylstilbesterol	56-53-1
U090	Dihydrosafrole	94-58-6
U091	3,3'-Dimethoxybenzidine	119-90-4
U092	Dimethylamine (I)	124-40-3
U093	p-Dimethylaminoazobenzene	60-11-7
U094	7,12-Dimethylbenz(a)anthracene	57-97-6
U095	3,3'-Dimethylbenzidine	119-93-7
U096	alpha, alpha-Dimethylbenzyl-hydroperoxide (R)	80-15-9
U097	Dimethylcarbamoyl chloride	79-44-7
U098	1,1-Dimethythydrazine	57-14-7
U099	1,2-Dimethylhydrazine	540-73-8
U101	2,4-Dimethylphenol	105-67-9
U102	Dimethyl phthalate	131-11-3
U103	Dimethyl sulfate	77-78-1
U105	2,4-Dinitrotoluene	121-14-2
U106	2,6-Dinitrotoluene	606-20-2

U107	Di-n-octyl phthalate	117-84-0
U108	1,4-Dioxane	123-91-1
U109	1,2-Diphenylhydrazine	122-66-7
U110	Dipropylamine (I)	142-84-7
U111	Di-n-propylnitrosamine	621-64-7
U041	Epichlorohydrin	106-89-8
U001	Ethanal (I)	75-07-0
U174	Ethanamine, N-ethyl-N-nitroso-	55-18-5
U155	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91-80-5
U067	Ethane, 1,2-dibromo-	106-93-4
U076	Ethane, 1,1-dichloro-	75-34-3
U077	Ethane, 1,2-dichloro-	107-06-2
U131	Ethane, hexachloro-	67-72-1
U024	Ethane, 1,1'-(methylenebis (oxy))bis(2-chloro-)	111-91-1
U117	Ethane, 1,1'-oxybis- (I)	60-29-7
U025	Ethane, 1,1'-oxybis(2-chloro-)	111-44-4
U184	Ethane, pentachloro-	76-01-7
U208	Ethane, 1,1,1,2-tetrachloro-	630-20-6
U209	Ethane, 1,1,2,2-tetrachloro-	79-34-5
U218	Ethanethioamide	62-55-5
U226	Ethane, 1,1,1-trichloro	71-55-6
U227	Ethane, 1,1,2-trichloro-	79-00-5
U359	Ethanol, 2-ethoxy-	110-80-5
U173	Ethanol, 2,2'-(nitrosoimino) bis-	1116-54-7
U004	Ethanone, 1-phenyl	98-86-2
U043	Ethene, chloro-	75-01-4
U042	Ethene, (2-chlorethoxy)-	110-75-8
U078	Ethene, 1,1-dichloro	75-35-4
U079	Ethene, 1,2-dichloro- (E)	156-60-5
U210	Ethene, tetrachloro	127-18-4
U228	Ethene, trichloro	79-01-6
U112	Ethyl acetate (I)	141-78-6
U113	Ethyl acrylate (I)	140-88-5
U238	Ethyl carbamate (urethane)	51-79-6
[U038	Ethyl 4,4'-dichlorobenzilate	510-15-6]
U114	Ethylenebis dithiocarbamic acid, salts and esters	'111-54-6
U067	Ethylene dibromide	106-93-4
U077	Ethylene dichloride	107-06-2
U359	Ethylene glycol monoethyl ether	110-80-5
U115	Ethylene oxide (I,T)	75-21-8
U116	Ethylene thiourea	96-45-7
U117	Ethyl ether (I)	60-29-7
U076	Ethylidene dichloride	75-34-3
U118	Ethylmethacrylate	97-63-2
U119	Ethyl methanesulfonate	62-50-0
U120	Fluoranthene	206-44-0
U122	Formaldehyde	50-00-0
U123	Formic acid (C,T)	64-18-6
U124	Furan (I)	110-00-9
U125	2-Furancarboxaldehyde (I)	98-01-1
U147	2,5-Furandione	108-31-6
U213	Furan, tetrahydro- (I)	109-99-9
U125	Furfural (I)	98-01-1
U124	Furfuran (I)	110-00-9
U206	D-Glucopyranose, 2-deoxy-2(3-methyl-3-nitrosoureido)-	18883-66-4
U206	D-Glucose, 2-deoxy-2-(((methylnitrosoamino) carbonyl(amino)-	18883-66-4
U126	Glycidylaldehyde	765-34-4
U163	Guanidine, N-nitroso-N-methyl-N'-nitro-	70-25-7
U127	Hexachlorobenzene	118-74-1
U128	Hexachlorobutadiene	87-68-3
[U129	Hexachlorocyclohexane (gamma isomer)]	58-88-9
U130	Hexachlorocyclopentadiene	77-47-4
U131	Hexachloroethane	67-72-1
U132	Hexachlorophene	70-30-4
U243	Hexachloropropene	1888-71-7
U133	Hydrazine (R,T)	302-01-2
U086	Hydrazine,1,2-diethyl	1615-80-1
U098	Hydrazine,1,1-dimethyl-	57-14-7
U099	Hydrazine,1,2-dimethyl	540-73-8
U109	Hydrazine,1,2-diphenyl	122-66-7
U134	Hydrofluoric acid (C,T)	7664-39-3
U134	Hydrogen fluoride (C,T)	7664-39-3
U135	Hydrogen sulfide	7783-06-4
U135	Hydrogen sulfide H_2S	7783-06-4
U096	Hydroperoxide, 1-methyl-1-phenylethyl (R)	80-15-9
[U136	Hydroxydimethylarsine oxide	75-60-5]
U116	2-Imidazolidinethione	96-45-7
U137	Indeno(1,2,3cd) pyrene	193-39-5
U139	Iron dextran	9004-66-4
U190	1,3-Isobenzofurandione	85-44-9
U140	Isobutyl alcohol (I,T)	78-83-1
U141	Isosafrole	120-58-1
U142	Kepone	143-50-0
U143	Lasiocarpine	303-34-4
U144	Lead acetate	301-04-2
U146	Lead, bis(acetato-O-)tetrahydroxytri-	1335-32-6
U145	Lead phosphate	7446-27-7
U146	Lead subacetate	1335-32-6
U129	Lindane	58-89-9
U163	MNNG	70-25-7
U147	Maleic anhydride	108-31-6
U148	Maleic hydrazide	123-33-1
U149	Malononitrile	109-77-3
U150	Melphalan	148-82-3
U151	Mercury	7439-97-6
U152	Methacrylonitrile (I,T)	126-98-7
U092	Methanamine, N-methyl- (I)	124-40-3
U029	Methane, bromo-	74-83-9
U045	Methane, chloro- (I,T)	74-87-3
U046	Methane, chloromethoxy-	107-30-2
U068	Methane, dibromo-	74-95-3
U080	Methane, dichloro-	75-09-2
U075	Methane, dichlorodifluoro-	75-71-8
U138	Methane, iodo-	74-88-4
U119	Methanesulfonic acid, ethyl ester	62-50-0
U211	Methane, tetrachloro-	56-23-5
U153	Methanethiol (I,T)	74-93-1
U225	Methane, tribromo-	75-25-2
U044	Methane, trichloro-	67-66-3
U121	Methane, trichlorofluoro-	75-69-4
U036	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a,-hexahydro-	57-74-9
[U123	Methanoic acid (C,T)	64-18-6]
U154	Methanol (I)	67-56-1
U155	Methapyrilene	91-80-5
U142	1,3,4-Metheno-2H,cyclobuta (cd)pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachloro-octahydro-	143-50-0
U247	Methoxychlor	72-43-5
U154	Methyl alcohol (I)	67-56-1
U029	Methyl bromide	74-83-9
U186	1-Methylbutadiene (I)	504-60-9
U045	Methyl chloride (I,T)	74-87-3
U156	Methyl chlorocarbonate (I,T)	79-22-1
U226	Methylchloroform	71-55-6
U157	3-Methylcholanthrene	56-49-5
U158	4,4'-Methylenebis (2-chloroaniline)	101-14-4
U068	Methylene bromide	74-95-3
U080	Methylene chloride	75-09-2
U159	Methyl ethyl ketone (MEK) (I,T)	78-93-3
U160	Methyl ethyl ketone peroxide (R,T)	1338-23-4

U138	Methyl iodide	74-88-4
U161	Methyl isobutyl ketone (I)	108-10-1
U162	Methyl methacrylate (I,T)	80-62-6
[U163	N-Methyl-N'-nitro-N-nitrosoguanidine]	70-25-7
U161	4-Methyl-2-pentanone (I)	108-10-1
U164	Methylthiouracil	56-04-2
U010	Mitomycin C	50-07-7
U059	5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-((3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxyl)-7,8,9,10,tetrahydro-6,8,11-trihydroxy-1-methoxy-	20830-81-3
U167	1-Naphthalenamine	134-32-7
U168	2-Naphthalenamine	91-59-8
U026	Naphthalenamine,N,N'-bis(2-chloroethyl)-	494-03-1
U165	Naphthalene	91-20-3
U047	Naphthalene, 2-chloro-	91-58-7
U166	1,4-Naphthalenedione	130-15-4
U236	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethyl-(1,1'-biphenyl)-4,4'diyl)) bis(azo)bis(5)-amino-4-hydroxy),-tetrasodium salt	72-57-1
U166	1,4,Naphthoquinone	130-15-4
U167	alpha-Naphthylamine	134-32-7
U168	beta-Naphthylamine	91-59-8
[U026	2-Naphthylamine,N,N-bis(2-chloroethyl)-	494-03-1
U167	1-Naphthylenamine	134-32-7
U168	2-Naphthylenamine	91-59-8]
U217	Nitric acid, thallium(1+) salt	10102-45-1
U169	Nitrobenzene (I,T)	98-95-3
U170	p-Nitrobenzene	100-02-7
U171	2-Nitropropane (I,T)	79-46-9
U172	N-Nitrosodi-n-butylamine	924-16-3
U173	N-Nitrosodiethanolamine	1116-54-7
U174	N-Nitrosodiethylamine	55-18-5
[U111	N-Nitrosodi-n-propylamine	621-64-7]
U176	N-Nitroso-N-ethylurea	759-73-9
U177	N-Nitroso-N-methylurea	684-93-5
U178	N-Nitroso-N-methylurethane	615-53-2
U179	N-Nitrosopiperidine	100-75-4
U180	N-Nitrosopyrrolidine	930-55-2
U181	5-Nitro-o-toluidine	99-55-8
U193	1,2-Oxathiolane,2,2-dioxide	1120-71-4
U058	2H-1,3,2-Oxazaphosphorine-2-amine,N,N-bis(2-chloroethyl) tetrahydro-, 2-oxide	50-18-0
[U058	2H-1,3,2-Oxazaphosphorine,2-(bis(2-chloroethyl)amino)-tetrahydro-, 2-oxide]	50-18-0
U115	Oxirane (I,T)	75-21-8
U126	Oxiranecarboxyaldehyde	765-34-4
U041	Oxirane,(chloromethyl)-	106-89-8
U182	Paraldehyde	123-63-7
U183	Pentachlorobenzene	608-93-5
U184	Pentachloroethane	76-01-7
U185	Pentachloronitrobenzene	82-68-8
See F027		
[U242]	Pentachlorophenol	87-86-5
U161	Pentanol, 4-methyl-	108-10-1
U186	1,3-Pentadiene (I)	504-60-9
U187	Phenacetin	62-44-2
U188	Phenol	108-95-2
U048	Phenol,2-chloro-	95-57-8
U039	Phenol,4-chloro-3-methyl-	59-50-7
U081	Phenol,2,4-dichloro-	120-83-2
U082	Phenol,2,6-dichloro-	87-65-0
U089	Phenol,4,4'-(1,2-diethyl-1,2-ethenediyl)bis-,(E)-	56-53-1
U101	Phenol,2,4-dimethyl-	105-67-9
U052	Phenol, methyl-	1319-77-3
U132	Phenol,2,2'-methylenebis (3,4,6-trichloro-	70-30-4
U170	Phenol,4-nitro-	100-02-7
See F027		
[U242]	Phenol, pentachloro-	87-86-5
See F027		
[U212]	Phenol,2,3,4,6-tetrachloro-	58-90-2
See F027		
[U230]	Phenol,2,4,5-trichloro-	95-95[4]-4
See F027		
[U231]	Phenol,2,4,6-trichloro	88-06-2
U150	L-phenylalanine, 4-(bis(2-chloroethyl)amino)-	148-82-3
[U137	1,10-(1,2-phenylene) pyrene	193-39-5]
U145	Phosphoric acid, lead (2+) salt (2:3)	7446-27-7
U087	Phosphorodithioic acid,0,0-diethyl-,S-methylester	3288-58-2
U189	Phosphorus sulfide (R)	1314-80-3
U190	Phthalic anhydride	85-44-9
U191	2-Picoline	109-06-8
U179	Piperidine, 1-nitroso-	100-75-4
U192	Pronamide	23950-58-5
U194	1-Propanamine, (I,T)	107-10-8
U111	1-Propanamine, N-nitroso-N-propyl-	621-64-7
U110	1-Propanamine, N-propyl- (I)	142-84-7
U066	Propane, 1,2-dibromo-3-chloro-	96-12-8
U083	Propane, 1,2-dichloro-	78-87-5
U149	Propanedinitrile	109-77-3
U171	Propane, 2-nitro- (I,T)	79-46-9
U027	Propane,2,2'oxybis (2-chloro-)	108-60-1 [39638-32-9]
U193	1,3-Propane sultone	1120-71-4
See F027		
	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	93-72-1
U235	1-Propanol,2,3-dibromo-, phosphate (3:1)	126-72-7
U140	1-Propanol, 2-methyl- (I,T)	78-83-1
U002	2-Propanone (I)	67-64-1
[U084	1-Propane, 1,3-dichloro-	542-75-6
U152	2-Propanenitrile, 2-methyl- (I,T)]	126-98-7
U007	2-Propenamide	79-06-1
U084	1-Propene, 1,3-dichloro-	542-75-6
U243	1-Propene, 1,1,2,3,3,3-hexachloro	1888-71-7
U009	2-Propenenitrile	107-13-1
U152	2-Propenenitrile, 2-methyl- (I,T)	126-98-7
U008	2-Propenoic acid (I)	79-10-7
U113	2-Propenoic acid, ethyl ester (I)	140-88-5
U118	2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2
U162	2-Propenoic acid, 2-methyl, methyl ester (I,T)	80-62-6[6-2]
[U233	Propionic acid, 2-(2,4,5,-trichlorophenoxy)-]	93-72-1
U194	n-Propylamine (I,T)	107-10-8
U083	Propylene dichloride	78-87-5
U148	3,6-Pyridazinedione,1,2-dihydro-	123-33-1
U196	Pyridine	110-86-1
[U155	Pyridine, 2-((2-dimethylamino)ethyl)-2-phenylamino-]	91-80-5
U191	Pyridine, 2-methyl	109-06-8
U237	2,4(1H,3H)-Pyrimidinedione, 5-(bis(2-chloroethyl)amino)-	66-75-1
U164	4(1H)-Pyrimidinone,2,3-dihydro-6-methyl-2-thioxo-	56-04-2
U180	Pyrrolidine, 1-nitroso-	930-55-2
U200	Reserpine	50-55-5

U201	Resorcinol	108-46-3
U202	Saccharin and salts	'81-07-2
U203	Safrole	94-59-7
U204	Selenious acid	7783-00-8
U204	Selenium dioxide	7783-00-8
U205	Selenium sulfide	7488-56-4
U205	Selenium sulfide SeS_2 (R,T)	7488-56-4 [7446-34-6]
U015	L-Serine, diazoacetate (ester)	115-02-6
See F027		
[U223]	Silvex (2,4,5,-TP)	93-72-1
U206	Streptozotocin	18883-66-4
U103	Sulfuric acid, dimethyl ester	77-78-1
U189	Sulfur phosphide (R)	1314-80-3
See F027		
[U232]	2,4,5-T	93-76-5
U207	1,2,4,5,-Tetrachlorobenzene	95-94-3
U208	1,1,1,2-Tetrachloroethane	630-20-6
U209	1,1,2,2-Tetrachloroethane	79-34-5
U210	Tetrachloroethylene	127-18-4
See F027		
[U212]	2,3,4,6-Tetrachlorophenol	58-90-2
U213	Tetrahydrofuran (I)	109-99-9
U214	Thallium (I) acetate	15843-14-8
U215	Thallium (I) carbonate	6533-73-9
U216	Thallium (I) chloride	7791-12-0
U216	Thallium chloride Tlcl	7791-12-0
U217	Thallium (I) nitrate	10102-45-1
U218	Thioacetamide	62-55-5
U153	Thiomethanol (I,T)	74-93-1
U244	Thioperoxydicarbonic diamide $((H_2N)C(S))_2S_2$, tetramethyl-	137-26-8
U219	Thiourea	62-56-6
U244	Thiram	137-26-8
U220	Toluene	108-88-3
U221	Toluenediamine	25376-45-8
U223	Toluene diisocyantate (R,T)	26471-62-5
U328	o-Toluidine	95-53-4
U353	p-Toluidine	106-49-0
U222	o-Toluidine hydrochloride	636-21-5
U011	1H-1,2,4-Triazol-3-amine	61-82-5
[U232	2,4,5-Trichloroacetic acid, salts and esters	93-76-5
U226	1,1,1-Trichloroethane	71-55-6]
U227	1,1,2-Trichloroethane	79-00-5
U228	Trichloroethylene	79-01-6
U121	Trichloromonofluoromethane	75-69-4
See F027		
[U230]	2,4,5-Trichlorophenol	95-95-4
See F027		
[U231]	2,4,6-Trichlorophenol	88-06-2
[U232	2,4,5-Trichlorophenoxyacetic acid	
U233	2,4,5-Trichlorophenoxypropionic acid, salts and esters]	93-72-1
U234	1,3,5[sym]-Trinitrobenzene (R,T)	99-35-4
U182	1,3,5-Trioxane,2,4,6-trimethyl-	123-63-7
U235	Tris(2,3-dibromopropyl) phosphate	126-72-7
U236	Trypan blue	72-57-1
[U237	Uracil, 5-(bis(2-chloroethyl) amino)]	66-75-1
U237	Uracil mustard	66-75-1
U176	Urea, N-ethyl-N-nitroso-	759-73-9
U177	Urea, N-methyl-N-nitroso-	684-93-5
U043	Vinyl chloride	75-01-4
U248	Warfarin, and salts, when present at concentrations of 0.3% or less	'81-81-2
U239	Xylene (I)	1330-20-7
U200	Yohimban-16-carboxylic acid, 11, 17-dimethoxy-18((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester, (3beta,16beta, 17alpha,18beta,20alpha)-	50-55-5
U249	Zinc phosphide Zn_3P_2, when present at concentrations of 10% or less	1314-84-7

'CAS number given for parent compound only.

Section 5. Nerve and Blister Agents. The following substances are listed as hazardous wastes:

Kentucky Waste Number	Substance	Chemical Abstracts Number
N001	GB (isopropyl methyl phosphonoflouridate) (H)	107-44-8
N002	VX (O-ethyl-S-(2-diisopropyl-aminoethyl) -methyl phosphonothiolate) (H)	50782-69-9
N003	H (bis(2-chloroethyl) sulfide) and related compounds (H)	505-60-2

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: October 11, 1989
FILED WITH LRC: October 12, 1989 at 9 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 27 CFR 55.206, 55.218, 55.219, 55.220, 30 CFR 77.1301(c)

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.135, 350.450, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface coal mining and reclamation operations. This regulation provides for permits to conduct these operations. The regulation specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits and renewals, transfers, assignments, and sales of permit rights.

Section 1. Applicability. Excluding coal exploration operations, this regulation shall apply to all applications, all actions regarding permits, and all surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. No person shall engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit under this

chapter for the area to be affected by the operations.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations shall file a complete and accurate application for a permanent program permit which shall comply fully with all applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operations until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit under Section 21 of this regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may, at any time, apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permanent program permits. An application for the transfer, sale, or assignment of rights granted under a permit may be submitted at any time. The actual transfer, sale, or assignment of permit rights, however, may not take place until written permission has been granted by the cabinet.

(e) Amendment of permanent program permits. A permittee may, at any time, apply for an amendment to a permit under Section 23 of this regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. Any person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet, and the applicable requirements of KRS Chapter 350 and 405 KAR.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 USC 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 USC 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.); and the Bald Eagle Protection Act, as amended (16 USC 668a), as required by 30 CFR 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as set forth in Section 8(6) and (7) of this regulation and, if necessary, by any other measures the cabinet may deem appropriate.

Section 4. Preliminary Requirements. A person desiring a permit shall submit to the cabinet a preliminary application of the form and content prescribed by the cabinet. The preliminary application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including, but not limited to, locations of the coal seam(s) to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the cabinet. Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form and content required by the cabinet, including a copy to be filed for public inspection under Section 8(8) of this regulation.

(b) The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet with attachments, plans, maps, certifications, drawings, calculations or other documentation or relevant information as the cabinet may require.

(c) The application shall be complete with respect to all information required by 405 KAR and include, at a minimum: for surface mining activities, all the applicable information required under 405 KAR 8:030; for underground mining activities, all the information required under 405 KAR 8:040; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050. No application shall be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of all technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations which collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency who provided information which has been made a part of the application regarding land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or some other

person who will serve as agent for service of notices and orders. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may designate persons authorized by the applicant to submit modifications to the application to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If any of the information marked on the preliminary map required under Section 4 of this regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this regulation.

(b) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map. However, when the cabinet determines that a map scale larger than 400 feet to the inch is required to adequately show mine site details, a map of larger scale shall be provided by the applicant. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) Where a map or drawing is required to be certified by a qualified registered professional engineer, the map or drawing shall bear the seal and signature of the engineer as required by KRS Chapter 322, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with applications shall be prepared by or under the direction of a qualified registered professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS Chapter 322 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the cabinet. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit.

(2) The applicant shall submit an application fee of $375 for each application, plus an additional $75 for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. However, no acreage fees shall be required for surface areas overlying underground or auger workings which will not be affected by surface operations and facilities.

(3) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. No permit application shall be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the application is submitted to the cabinet. The applicant may elect to begin publication on or after the date the applicant receives the notification from the cabinet under Section 13(2) of this regulation that the application has been deemed administratively complete and ready for technical review. The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(b) The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application may be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, satisfactory to the cabinet, which may consist of an affidavit from the publishing newspaper certifying the dates, place and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant; and

(b) A map or description which shall:

1. Clearly show or describe towns, rivers,

streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey seven and one-half (7 1/2) minute quadrangle map(s) which contains the area shown or described; and

4. If a map is used, show the north arrow and map scale.

(c) The location where a copy of the application is available for public inspection under subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted under Sections 9, 10, and 11 of this regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except where public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6)(a) and (b); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) If the application includes a request for an experimental practice under 405 KAR 7:060, a statement indicating that an experimental practice is requested and identifying the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under Section 9 of this regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, planning agencies and sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(b) All federal and Kentucky governmental agencies which have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are a part of the permit coordination process required by Section 3 of this regulation; and

(c) Those agencies with an interest in the particular proposed operation including, but not limited to:

1. The USDA Soil Conservation Service State Conservationist;

2. The local U.S. Army Corps of Engineers district engineer;

3. The National Park Service;

4. Kentucky and federal fish and wildlife agencies; and

5. The state historic preservation officer.

(8) In accordance with Section 12 of this regulation, the cabinet shall, upon receipt of the application, make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed, and shall provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided under Section 8(6) and (7) of this regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet in the manner prescribed by the cabinet, and shall be submitted within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state or local government agency or authority to be notified under Section 8 of this regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requester at the conference;

(b) State whether the requester desires to

have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 8(1) of this regulation.

(2) Except as provided in subsection (3) of this section, if a permit conference has been requested in accordance with subsection (1) of this section, the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section. The conference shall be conducted according to the following:

(a) If requested under subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a conference requester in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:090 shall not apply to the conduct of the conference. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(3) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference need not be held.

(4) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required under 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.

(a) The cabinet shall make an application for a permit, major or minor revision, amendment, or renewal of a permit available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under subsections (2) and (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office when the changes are submitted to the Division of Permits.

(2) Information pertaining to coal seams, test borings, core samples, or soil samples in applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected.

(3) Confidentiality. The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information. Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application. Where a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:090. Confidential information shall be limited to the following:

(a) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal which are potentially toxic in the environment;

(b) Information on the nature and location of archaeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application. If the application is determined to be incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies which render the application incomplete. The applicant may submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness. If, after ten (10) working days, the cabinet determines that the application is still incomplete, the cabinet shall return the

incomplete application to the applicant with written notification of the reasons for the determination.

(b) A determination by the cabinet that the application is administratively complete means that the application contains the major elements required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 which are necessary to allow meaningful review of the application by the cabinet. An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods set forth in Section 16 of this regulation, the cabinet shall either:

(a) Notify the applicant of the cabinet's decision to issue or deny the application; or

(b) Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) If the cabinet determines from either the lists submitted as part of the application under 405 KAR 8:030, Section 3(3) or 405 KAR 8:040, Section 3(3), or from other available information, that any surface coal mining operation owned or controlled by the applicant is currently in violation of any law, rule, or regulation of the United States or any state law, rule, or regulation enacted pursuant to federal law, rule, or regulation, pertaining to air or water environmental protection, or of SMCRA or KRS Chapter 350, and regulations promulgated pursuant thereto, the cabinet shall require the applicant, before the issuance of the permit, to either:

(a) Submit to the cabinet proof which is satisfactory to the cabinet and other agencies which have jurisdiction over the violation, that the violation has been or is in the process of being corrected; or

(b) Establish to the cabinet that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. In this case, the permit shall contain a condition requiring that if the administrative or initial judicial hearing authority either denies a stay applied for in the appeal, or affirms the violation, then any surface coal mining operations being conducted under the permit shall be terminated unless and until the permittee complies with paragraph (a) of this subsection. For loss of appeal on violations of laws or regulations of the United States or states other than Kentucky, operations shall be terminated under this paragraph only when the cabinet has actual, verified notice of the loss of appeal and the subsequent failure of the permittee to correct or begin correcting the violation; and the termination shall be set aside by the cabinet only when the cabinet has actual, verified notice that the permittee has corrected the violation or is in the process of correcting the violation.

(5) No permit shall be issued if the cabinet determines that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24 of such a nature and duration and with such resulting "irreparable damage to the environment" (as defined in 405 KAR 7:020) that indicates an intent not to comply with SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24. Before any final determination by the cabinet pursuant to this subsection the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:090.

Section 14. Criteria for Application Approval or Denial. No application for a permit, revision (as applicable), or amendment of a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished under the mining and reclamation plan contained in the application.

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5).

(5)(a) The proposed operations will not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the

effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that the cabinet has determined that no additional protection measures are necessary.

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required under 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2).

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this regulation.

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870, or has entered into a payment schedule approved by OSM.

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of such a nature and duration and with such resulting "irreparable damage to the environment" (as defined in 405 KAR 7:020) as to indicate an intent not to comply with SMCRA or KRS Chapter 350.

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18.

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use.

(12) The applicant can reasonably be expected to submit the performance bond or other equivalent guarantee required under 405 KAR Chapter 10 prior to the issuance of the permit.

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3.

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining.

(15) The cabinet has made all specific approvals required under 405 KAR Chapters 16 through 20.

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 USC 1531 et seq.).

(17) The applicant has not forfeited any bond under KRS Chapter 350. When the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land.

(18) The applicant has not had a permit revoked, suspended or terminated under KRS Chapter 350. If the applicant has had a permit revoked, suspended or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof satisfactory to the cabinet that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her.

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property.

(20) The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures as approved by the cabinet have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as set forth under 405 KAR 24:040.

(21) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7 or 405 KAR 18:190, Section 5, the applicant has demonstrated, to the satisfaction of the cabinet, that the site of the operation will be a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. No application for a permit, revision, or amendment which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information set forth in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as provided for in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(a), (b), (d), and (e) of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(c) of this regulation of a major revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the

forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application submitted under Section 2(2)(c) of this regulation for a minor revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within fifteen (15) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the fifteen (15) working-day period available to the cabinet.

(b) If the notice, hearing and conference procedures mandated by KRS Chapter 350 and 405 KAR prevent a decision from being made within the time periods specified in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county, and the chief executive officer of any municipality, in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The field office director of the Office of Surface Mining Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet decides to approve the application, it shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations when construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet under this subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this regulation; Section 3 of 405 KAR 7:060; Sections 4, 6, and 7 of 405 KAR 8:050; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall be deemed to constitute knowledge and acceptance of the conditions set forth in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter whether or not the conditions have been set forth in the permit.

(1) General.

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24; and

(b) Except to the extent that the cabinet otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the approved application; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted under 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit; and which are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection when the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including, but not limited to:

1. Any accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and which prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

2. Utilizing any methods specified in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter.

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) After the review required by subsection (1) of this section, or at any time, the cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:090.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations described in the existing application and approved under the current permit.

(b) When a revision is required by an order issued under Section 19 of this regulation.

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required under 405 KAR Chapters 7 through 24.

(2) Major revision.

(a) A revision is a major revision if the proposed change is of such scope and nature that the cabinet determines that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall include, but shall not be limited to:

1. Changes in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. Variances to approximate original contour requirements;

4. Construction or relocation of roads, where the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. Changes which may adversely affect significant fish and wildlife habitats or endangered species;

6. Proposed experimental practices;

7. Changes which may cause major impacts on the hydrologic balance;

8. Incidental boundary revisions that affect new watersheds;

9. Incidental boundary revisions that include diversions of perennial streams;

10. Incidental boundary revisions that include new areas from which coal will be removed, except these revisions shall be limited to ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Major revisions shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this regulation; and shall be submitted on forms prescribed by the cabinet. In addition to the requirements of Section 8(5) of this regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) All revisions which are not determined by the cabinet to be major revisions are minor revisions. Minor revisions shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this regulation, except that minor field revisions described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this regulation, and the time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of application submittal. Minor revisions [; and] shall be submitted on forms prescribed by the cabinet.

(b) If the cabinet determines that a proposed minor revision is actually a major revision during the administrative completeness determination under Section 13 of this regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons, if any, that the cabinet determines could have an interest that may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) The following minor revisions shall be deemed minor field revisions which may be reviewed and processed in accordance with this section by the appropriate regional office of the department. However, if the number of persons that potentially could have an interest that may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine that the proposed revision is a major revision and it shall not be processed under this paragraph.

1. Proposals for minor relocation of underground mine entries where:

a. There are no structures or "renewable resource lands" (as that term is defined in paragraph (b) of the definition provided in 405 KAR 7:020, Section 1) overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

2. Proposals for retention of concrete platforms and small buildings where:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure.

3. Proposals to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; [, and] roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement accepting maintenance responsibilities for the road.

4. Proposals to increase the diameter of culverts used as road crossdrains, not including culverts used for stream crossings, provided that the proposed culvert is the same type of pipe as the previously approved culvert.

5. Proposals to install additional culverts used as road crossdrains (not including culverts used for stream crossings), provided that the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and is the same type of pipe as the nearest downstream crossdrain.

6. Proposals for minor relocation of on-bench sediment control structures (dugouts only) in order to locate the structures at low spots on the same bench on which they were initially proposed, where:

a. The drainage area to the structure will remain the same as the original design;

b. The proposed location will not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary.

7. Proposals to retain diversions of overland flow (not including stream diversions) as permanent facilities where:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversions; and

b. The diversions have previously been designed to the standards for permanent diversions.

8. Proposals for relocation of topsoil storage areas where:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

9. Proposals to substitute plant species where:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved: revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted.

10. Proposals to utilize hydroseeding for trees instead of planting trees or tree seedlings where:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. No change in tree species is involved unless concurrently approved under subparagraph 9 of this paragraph.

11. Proposals to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed.

12. Proposals to retain small depressions in the reclaimed area.

13. Proposals required by the cabinet to increase frequency of air blast monitoring.

14. Proposals required by the cabinet to increase frequency of air pollution monitoring.

15. Proposals to employ [additional or] more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls.

16. Proposals to add a portable coal crusher where:

a. The crusher and associated conveying equipment are a completely portable, trailer mounted unit;

b. The equipment will be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation will not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment will always be located in the mining pit or other location previously permitted as a disturbed area controlled by a

previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds.

17. Proposals to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated.

18. Proposals to relocate an explosive storage area within the existing permit area in accordance with 27 CFR 55.206, 55.218, 55.219, 55.220, and 30 CFR 77.1301(c).

19. Approval for minor relocation of support facilities such as conveyors, hoppers, and coal stockpiles where:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

20. Proposals for modifications of shared facilities where that modification has already been approved in a revision for one of the permittees by the Division of Permits and no additional performance bond was required for the initial revision.

21. Proposals to add a hopper to a permitted area where:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond.

22. Proposals to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills.

23. Proposals to cut berms, provided that the cuts will not cause bypassing or short circuiting of on-bench structures or other sedimentation control structures.

24. Proposals to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 through 24.

25. Proposals for incidental boundary revisions for minor off-permit disturbances where:

a. The total acreage of the minor off-permit disturbances is no more than one (1) acre combined per proposal;

b. The cumulative acreage limitation established in the definition of "incidental boundary revision" in 405 KAR 7:020 is not exceeded;

c. The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish and wildlife, areas that may contain threatened or endangered species, or areas designated unsuitable for mining under 405 KAR Chapter 24;

d. The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

e. There are no structures such as excess spoil disposal fills, coal mine waste disposal fills or impoundments, or water impoundments involved;

f. The surface owner of the area to be permitted is a surface owner of disturbed area under the existing permit; and

g. An additional performance bond in the amount of $5000 has been filed by the permittee.

h. If deemed necessary for any reason, the regional administrator may decline to review and process any proposal to permit an off-permit disturbance as a minor field revision and instead require that an application be submitted to the Division of Permits.

26. Except as provided below, proposals to remove sedimentation ponds previously approved as permanent impoundments where the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. However, proposals to remove sedimentation ponds in the following situations shall not be processed as minor field revisions:

a. Where the structure has a hazard classification of B or C;

b. Where the impoundment is a developed water resource land use;

c. Where the removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. Where the impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland where no other nearby source of water is available to the livestock); or

e. Where the impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values.

27. Proposals to approve exemptions from the requirement to pass drainage through sedimentation ponds for disturbed areas that, due to unexpected field conditions, will not drain to an approved sedimentation pond where:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains a MRP map certified by a registered professional engineer showing the location of the disturbed area and the drainage area clearly.

(e) Proposed minor revisions which only seek to change the engineering design of impoundments and diversions of overland flow where no change in permit boundary is involved shall not be

subject to the administrative completeness determination of Section 13(2) of this regulation; however, the application shall be processed [logged] in, and written notice that [of receipt of] the application has been determined to be subject to this paragraph and is being forwarded for technical review shall be provided to the applicant. The time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of this notice [of receipt].

(4) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved under this section.

(5) Fees. Applications for major and minor revisions shall include a basic fee of $375, except that minor field revisions shall have no basic fee. If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application, except that no acreage fee shall be required for surface areas overlying underground workings which will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. Applications for renewal of permits shall be submitted within the time prescribed by Section 2(2)(b) of this regulation. Renewal applications shall be in a form and with content as required by the cabinet and in accordance with this section, and shall include at a minimum:

(a) The name and address of the permittee, the term of the renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this regulation;

(c) Evidence that liability insurance under 405 KAR 10:030, Section 4, will be provided by the applicant for the proposed period of renewal;

(d) A renewal fee of $375;

(e) Evidence that the performance bond will continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional revised or updated information which may be required by the cabinet.

(3) Applications for renewal shall be subject to the requirements of Sections 8 through 11, 13 and 16 of this regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 17 of this regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations will continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, to any persons who were parties to any informal conference held on the permit renewal and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest which is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review set forth in Section 24 of this regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to 405 KAR shall be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application, on forms provided by the cabinet, for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; **and**

[4. Applicable waivers in accordance with 405 KAR 24:040, Section 2(5). Unless the waivers originally submitted with the permit application or subsequent revisions or amendments stipulate that they are transferable, new waivers shall be executed in favor of the proposed successor. If these waivers are not obtained, the successor may only conduct reclamation operations within the area previously exempted by waiver that were disturbed by the original permittee and may not

extract coal within this area; and]

4. [5.] A processing fee of $375.

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent under subsection (3) of this section.

(c) Obtain sufficient performance bond coverage which will ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria specified in Section 14 of this regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which will ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred, and which is at least equivalent to the bond of the existing permittee;

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice described in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted under a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. However, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet may release the prior permittee from bond liability on the permit area if the successor in interest has filed a performance bond satisfactory to the cabinet, has received written approval of the cabinet for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under 405 KAR for reclamation of the areas affected by all prior permittees.

Section 23. Amendments. Except for incidental boundary revisions, no extensions to an area covered by a permit shall be approved under Section 20 (permit revisions) or Section 21 (permit renewals) of this regulation. All such extensions shall be made by application for another permit. However, if the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet may so amend the original permit provided that the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits under 405 KAR.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:090.

(2) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall:

(a) Have the right to judicial review as provided in KRS 224.085 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) Have the right to an action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits specified in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: October 5, 1989
FILED WITH LRC: October 6, 1989 at 9 a.m.

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

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 census shall be taken as provided by KRS 159.250.** [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.

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

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 <u>with his or her</u> [,] 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 PROTECTION & REGULATION CABINET
Department of Financial Institutions
Division of Securities
(As Amended)

808 KAR 10:040. Dishonest or unethical practice [conduct] defined.

RELATES TO: KRS [Chapter] 292.330(12)(a)7
STATUTORY AUTHORITY: KRS 292.500(3)
NECESSITY AND FUNCTION: To clarify and define the phrase "dishonest or unethical **practice** [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.

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

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 human immunodeficiency virus (HIV) [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 human immunodeficiency virus (HIV) shall be identified by a code (such as soundex plus birth date, or initials plus birth date). The code shall always be the same for a given patient but, in and of itself, shall not identify the patient. All reports shall include birthdate, sex, race, and county of residence. Reports of AIDS (acquired immune deficiency syndrome) and human immunodeficiency virus (HIV) infections shall include the following risk factors, if known:

(a) Homosexual male contact;

(b) History of intravenous drug use;

(c) Hemophilia;

(d) Receipt of blood products;

(e) Heterosexual contact with paragraphs (a) through (d) of this subsection; and

(f) Birth to an infected mother.

[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.

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

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, **as provided by 902 KAR 2:050.** [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
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CABINET FOR HUMAN RESOURCES
Department for Health Services
(As Amended)

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 as follows:

(1) Two (2) months of age: DTP, OPV;
(2) Four (4) months of age: DTP, OPV;
(3) Six (6) months of age: DTP;
(4) Fifteen (15) months of age: measles, rubella, DTP, OPV;
(5) Before school entry: DTP, OPV;
(6) Before sixth grade entry: measles, rubella;
(7) Fourteen (14) to sixteen (16) years of age: Td. [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.

[T]OPV: 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 for school entry. **Students entering the sixth grade require a total of two (2) doses, one (1) of which was received during or after 1980.** (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) "[T]OPV" 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
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CABINET FOR HUMAN RESOURCES
Department for Health Services
(As Amended)

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) "Sexually transmitted diseases (STD) for which a treatment exists to render them noninfectious" means syphilis, gonorrhea, chancroid, granuloma inguinale, nongonococcal urethritis, mucopurulent cervicitis and Chlamydia trachomatis infections including lymphogranuloma venereum.

(4) [(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.

(5) [(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 **for Which a Treatment Exists to Render them Noninfectious.** 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 or [/]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. **This section shall apply only to sexually transmitted diseases as defined by Section 1(3) of this regulation.**

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. **This section shall apply only to sexually transmitted diseases as defined by Section 1(3) of this regulation.**

[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 **shall** [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 **shall** [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 **shall** [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.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation
(As Amended)

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	$ 7,476 [7,212] [7,183]
2	10,020 [9,660] [11,656]
3	12,576 [12,108] [15,861]
4	15,120 [14,568] [19,155]
5	17,676 [17,016] [21,982]
6	20,220 [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 $2,676 [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.

REGULATIONS AMENDED AFTER HEARING

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

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

RELATES TO: KRS [Chapter] 224.020, 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 shall [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, Section 2;

(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, Sections 3 to 9; 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 during [at the time of] testing. Sewers over eighteen (18) inches in diameter shall be tested by the exfiltration method, or [and/or] smoke testing, or both, 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) If [Should] the cabinet denies [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 October 26, 1988 [December 10, 1985].

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: November 9, 1989
FILED WITH LRC: November 10, 1989 at 10 a.m.

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

401 KAR 5:010. Certification of wastewater system operators.

RELATES TO: KRS 224.032, 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: thirty-five (35) [fifteen (15)] dollars.

(d) Reinstatement of lapsed certificate: not to exceed thirty-five (35) dollars plus renewal fee.

(2) For training sessions conducted by the cabinet: not to exceed 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 June 30 [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 30 [1] of each renewal year. If the application and fee are not received by the cabinet prior to June 1, the certificate shall be considered lapsed and shall not be reinstated without payment of a reinstatement fee [invalid and the operator shall be required to obtain a new certificate] as provided in Section 6 of this regulation [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: November 9, 1989
FILED WITH LRC: November 10, 1989 at 10 a.m.

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

401 KAR 5:085. KPDES discharge permit and variance fees.

RELATES TO: KRS 224.020, 224.033, 224.034, 224.060, 224.073

STATUTORY AUTHORITY: KRS 224.033, 224.045

NECESSITY AND FUNCTION: This regulation defines the assessment of fees applicable to the issuance of discharge permits and variances. This regulation establishes permit and variance requirements in addition to those requirements of 401 KAR 5:005, 5:031, 5:045, 5:055, 5:060, 5:065, 5:070, 5:075, and 5:080 as are necessary to implement the fee schedule established herein.

Section 1. [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 October 26, 1988 [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
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NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 39:020. Delisting and exemption fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.871

NECESSITY AND FUNCTION: KRS 224.033(20) states that the Natural Resources and Environmental Protection Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fees for a petition to delist a hazardous waste and for applications for specific exemptions.

Section 1. Applicability of 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 October 26, 1988 [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
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NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 39:030. Part B treatment, storage, or disposal facility fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871
STATUTORY AUTHORITY: KRS 13A.210, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for Part B permits for treatment, storage, or disposal facilities.

Section 1. Applicability. (1) This regulation applies to all treatment, storage, or disposal facilities required by Section 4 of 401 KAR 38:010 to obtain a construction/operating permit from the cabinet.

(2) The provisions of this regulation shall apply to permit applications for treatment, storage, or disposal facilities submitted on or after 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 October 26, 1988 [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 unit fee shall be paid once for each different tank design. Tank design criteria includes differences in materials of construction, pressure vessels, nonpressure vessels, shape and ancillary equipment. The container unit fee shall be paid once for each different container type. Container type includes drums, tote bends, bottles and roll-off boxes. [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)(a) Tanks - $7,400 [11,000];
(b) A fee of $4,400 shall be paid for each additional tank of varying design.
(5)(a) Containers - $6,000 [7,700];
(b) A fee of $3,000 shall be paid for each additional container type.
(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 if required. 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
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NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 39:060. Short-term fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871
STATUTORY AUTHORITY: KRS 13A.210, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for short-term permits 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 October 16, 1988 [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
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NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

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 October 26, 1988 [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 at the facility: [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] fees 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. The tank and container unit fees in subsections (1) and (2) of this section shall be paid once for each different [type of] tank design or container type. Tank design criteria includes differences in materials of construction, pressure vessels,

nonpressure vessels, shape and ancillary equipment. Container types include drums, tote bends, bottles, and roll-off boxes. [and once for each different waste to be placed in the tank or container.]

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

401 KAR 39:090. Postclosure fees.

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.871

NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for permits for the postclosure care period for land disposal hazardous waste sites or facilities.

Section 1. Applicability. (1) This regulation applies to all owners and operators of hazardous waste sites or facilities in Kentucky who submit an application for a postclosure permit as specified in Section 1(2) of 401 KAR 38:010. This fee does not apply to owners and operators of hazardous waste sites or facilities that submit a postclosure plan as part of an application for an 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 October 26, 1988 [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
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NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 39:120. Part A application fee.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871, 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the Natural Resources and Environmental Protection Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for submitting Part A of the application for storage, treatment or disposal facility permits.

Section 1. Applicability. (1) This regulation applies to all treatment, storage, or disposal facilities required by Section 2(1) of 401 KAR 38:070 to submit Part A of the application for a hazardous waste site or facility permit.
(2) The provisions of this regulation shall apply to Part A applications for hazardous waste site or facility permits submitted on or after 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 as in effect on October 26, 1988.

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 design or container type. Tank design criteria includes differences in materials of construction, pressure vessels, nonpressure vessels, shape and ancillary equipment. Container types include drums, tote bins, bottles and roll-off boxes. [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
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NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

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 **having first obtained the required** [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 **having first obtained the required** [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: November 9, 1989
FILED WITH LRC: November 10, 1989 at 11 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Amended After Hearing)

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] as amended by publications in the "Federal Register" on July 7, 1989, page 28750; August 29, 1989, pages 35651 - 35653; September 20, 1989, pages 38790 - 38799; September 25, 1989, pages 39324 - 39327; September 26, 1989, pages 39500 - 39506; September 29, 1989, pages 40066 - 40069; and October 10, 1989, page 41447. 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] as amended by publications in the "Federal Register" on July 7, 1989, page 28750; September 20, 1989, pages 38790 - 38799; September 26, 1989, pages 39500 - 39506; September 29, 1989, pages 40066 - 40069; and October 10, 1989, page 41447 - 41448. 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] as amended by publication in the "Federal Register" on September 20, 1989, pages 38790 - 38799. 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 as amended by publications in the "Federal Register" on July 7, 1989, page 28750; September 20, 1989, pages 38790 - 38799; September 29, 1989, pages 40066 - 40069. 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], as amended by publications in the "Federal Register" on July 7, 1989, page 28750; August 29, 1989, pages 35651 - 35653; September 20, 1989, pages 38790 - 38799; September 25, 1989, pages 39324 - 39327; September 26, 1989, pages 39500 - 39506; September 29, 1989, pages 40066 - 40069 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.

Section 3. (1) The specific "Federal Register" publications listed in Section 1 of this administrative regulation are incorporated by reference.

(2) This material incorporated by reference in Sections 1 and 2 of this administrative regulation 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 4. [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: October 30, 1989
FILED WITH LRC: November 1, 1989 at 2 p.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOVEMBER 15, 1989

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 paragraph (2) of this 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.

(15) An employee may donate or receive sick leave donation under the following conditions:

(a) An employee with a sick leave balance in excess of seventy-five (75) hours may donate any or all such excess to an employee with a documented medical emergency who has exhausted all annual leave, sick leave, and compensatory leave.

1. Such voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the commissioner and shall include:

a. The name of the donor.

b. The agency in which the donor is employed.

c. The position number of the donor.

d. The Social Security number of the donor.

e. The name of the employee to which leave is being donated.

f. The agency in which the donee is employed.

g. The donee position number.

h. The donee Social Security number.

i. The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.

j. Certification by the donor that such donation is given without expectation or promise for any purpose other than that authorized by this regulation.

2. The donating employee must retain a sick leave balance of not less than seventy-five (75) hours.

3. A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in any manner other than that authorized by this regulation.

(b) A full-time, or part-time, status employee with a medical emergency who has exhausted all annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made in behalf of the employee by a personal representative of the employee in the event of the employee's incapacity to make application on his own behalf.

1. Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:

a. Employee name.

b. Position number.

c. Social Security number.

d. Employee title.

e. The reason transferred leave is needed, including a brief description of the nature,

severity, and anticipated duration of the medical emergency.

f. Signature of the requestor or his personal representative.

2. The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of his position for ten (10) or more consecutive working days.

(c) The appointing authority of the applicant to receive donated sick leave may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(d) At the end of each pay period while an employee is on donated leave, the employee's appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay, and shall notify the donor's appointing authority to reduce the donor's leave balance by that amount.

(e) No employee on donated sick leave shall be credited with leave in an amount in excess of the time of the documented medical emergency.

(f) No person shall through his office of employment use any promise, exchange, or influence to require an employee to donate excess sick leave to any other employee.

(g) For purposes of this regulation medical emergency shall mean an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty for ten (10) or more consecutive working days.

(h) A part-time employee with status may qualify for donated leave only to the extent of hours for which he would normally be scheduled to work.

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.

WALLACE G. WILKINSON, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: November 13, 1989
FILED WITH LRC: November 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 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 December 16, 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. The leave sharing program established in Section 2(15) of this regulation is not deemed to create or diminish current budgetary structures because sick leave is not a budget item.

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. The Department of Personnel has developed a form to be used in conjunction with the sick leave sharing program. A computer program will facilitate transfer of leave.

(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.

WALLACE G. WILKINSON, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: November 13, 1989
FILED WITH LRC: November 13, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 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 December 16, 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.

WALLACE G. WILKINSON, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: November 13, 1989
FILED WITH LRC: November 13, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 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 December 16, 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 3:010. Leave regulations for unclassified service.

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 the unclassified service persons in positions enumerated in KRS 18A.155(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. In practice, the leave regulations (101 KAR 2:100) which apply to merit system employees in the following specific areas have also been applied to the aforementioned categories of employees in the unclassified service.

Section 1. Annual leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, or 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. 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 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 (1) 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 for more than half of the workdays in a month, except:

(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work related injury covered by workers compensation.

(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.

(10) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 1(2) of

this regulation, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated annual leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency unless he is appointed at a lower salary; in this case the employee has the option to be paid for accumulated annual leave at the higher rate. The effective date of the separation shall be the last 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 1(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 an 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 the employee:

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

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

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

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

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

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

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

(a) When the employee is unable to work or

take paid leave for more than half of the workdays in a month due to a work related injury covered by workers compensation.

(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.

(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 in excess of thirty (30) working days. 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.

(15) An employee may donate or receive sick leave donation under the following conditions:

(a) An employee with a sick leave balance in excess of seventy-five (75) hours may donate any or all such excess to an employee with a documented medical emergency who has exhausted all annual leave, sick leave, and compensatory leave.

1. Such voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the commissioner and shall include:

a. The name of the donor.

b. The agency in which the donor is employed.

c. The position number of the donor.

d. The Social Security number of the donor.

e. The name of the employee to which leave is being donated.

f. The agency in which the donee is employed.

g. The donee position number.

h. The donee Social Security number.

i. The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.

j. Certification by the donor that such donation is given without expectation or promise for any purpose other than that authorized by this regulation.

2. The donating employee must retain a sick leave balance of not less than seventy-five (75) hours.

3. A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in any manner other than that authorized by this regulation.

(b) A full-time, or part-time, status employee with a medical emergency who has exhausted all annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made in behalf of the employee by a personal representative of the employee in the event of the employee's incapacity to make application on his own behalf.

1. Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:

a. Employee name.

b. Position number.

c. Social Security number.

d. Employee title.

e. The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.

f. Signature of the requestor or his personal representative.

2. The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of his position for ten (10) or more consecutive working days.

(c) The appointing authority of the applicant to receive donated sick leave may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(d) At the end of each pay period while an employee is on donated leave, the employee's appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay, and shall notify the donor's appointing authority to reduce the donor's leave balance by that amount.

(e) No employee on donated sick leave shall be credited with leave in an amount in excess of the time of the documented medical emergency.

(f) No person shall through his office of

employment use any promise, exchange, or influence to require an employee to donate excess sick leave to any other employee.

(g) For purposes of this regulation medical emergency shall mean an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty for ten (10) or more consecutive working days.

(h) A part-time employee with status may qualify for donated leave only to the extent of hours for which he would normally be scheduled to work.

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 and Overtime. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of this section and 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 employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off if the use of such time does not unduly disrupt the operations of the agency. 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 at one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(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)(a) 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.

(b) An employee in a policy making position shall be paid for all accrued compensatory leave, not to exceed 200 hours, only upon termination from the unclassified service. An employee who reverts to a position in the classified service or an employee who resigns one day and is employed the next day shall retain his accrued compensatory 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 his compensatory leave at the higher rate].

(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, or for other purposes that are deemed to be in the best interests of 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.

(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 for more than half of the workdays in a month, except:

(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work related injury covered by workers compensation.

(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.

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.

WALLACE G. WILKINSON, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: November 13, 1989
FILED WITH LRC: November 13, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 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 December 16, 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. The leave sharing program established in Section 2(15) of this regulation is not deemed to create or diminish current budgetary structures because sick leave is not a budget item.

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. The Department of Personnel has developed a form to be used in conjunction with the sick leave sharing program. A computer program will facilitate transfer of leave.

(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.]

WALLACE G. WILKINSON, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: November 13, 1989
FILED WITH LRC: November 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 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 December 16, 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 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.]

WALLACE G. WILKINSON, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: November 13, 1989
FILED WITH LRC: November 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 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 December 16, 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 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

GENERAL GOVERNMENT CABINET
Kentucky State Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:016. Restriction on use of amphetamines and amphetamine-like anorectic controlled substances.

RELATES TO: KRS 311.530 to 311.620
STATUTORY AUTHORITY: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.597 empowers the State Board of Medical Licensure to regulate the conduct of its licensees [determine those acts that shall constitute dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof by a licensee]. In accordance therewith, the purpose of this regulation is to regulate and control the use of amphetamine and amphetamine-like anorectic controlled substances.

Section 1. A physician shall not prescribe, order, dispense, administer, supply, sell or give any amphetamine or amphetamine-like anorectic controlled substance designated as Schedule II pursuant to KRS 218A.0780 or by duly promulgated regulation without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or distribute to others and the presence of an illicit market for the drug. The patient's record and the prescription order shall indicate the specific diagnosis/purpose for which the drug is being given. Such diagnosis/purpose shall be restricted to:

(1) The treatment of narcolepsy;
(2) The treatment of hyperkinesis;
(3) The treatment of drug-induced brain dysfunction;
(4) The treatment of epilepsy;
(5) The differential diagnostic psychiatric evaluation of depression;
(6) The treatment of depression shown to be refractory to other therapeutic modalities;
(7) The treatment of attention deficit disorder; however, when methylphenidate is prescribed for the treatment of attention deficit disorder in minor children, this regulation does not require the diagnosis/purpose to be noted on the prescription order; and
(8) The clinical investigation of the effects of such drugs or compounds in which case an investigative protocol therefrom shall have been submitted to, reviewed and approved by the board before such investigation has begun.

Section 2. Amphetamine means all Schedule II controlled substances in this group, including but not limited to dextroamphetamine and methamphetamine. Amphetamine-like means all Schedule II controlled substances with pharmacologic activity similar to the prototype drugs of the amphetamine class, including but not limited to phenmetrazine and methylphenidate.

Section 3. Amphetamine and amphetamine-like controlled substances shall not be prescribed, ordered, dispensed, administered, supplied, sold or given except as provided in this regulation. A departure from this regulation shall constitute dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or a member thereof.

Section 4. For legitimate medical purposes, a physician may apply in writing for a written waiver of any of these requirements. The board may issue such waivers with terms and conditions it deems appropriate.

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: October 31, 1989
FILED WITH LRC: November 14, 1989 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on December 21, 1989 at 10 a.m. at the Office of the Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by December 16, 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 regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you do not wish to attend this hearing, you may submit written comments on the proposed regulation. Send notification of intent to attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt
(1) Type and number of entities affected: Only those physicians who prescribe amphetamine and amphetamine-like substances.
(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings to those prescribing physicians.
1. First year: No costs or savings contemplated.
2. Continuing costs or savings: No costs or savings contemplated.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.
(2) Effects on the promulgating administrative body: No effect on the board, just makes it easier to discipline physicians who inappropriately prescribe.
(a) Direct and indirect costs or savings: No direct or indirect costs or savings.
1. First year: No costs or savings contemplated.
2. Continuing costs or savings: No costs or savings contemplated.
3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.
(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: Alternatives considered, specifically not regulating, but the board felt that the public health and safety are paramount.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict, overlapping or duplicated by this regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This regulation is needed to allow the board to discipline physicians who inappropriately prescribe amphetamine or amphetamine-like substances.
TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky State Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:018. Physician advertising.

RELATES TO: KRS 311.530 to 311.620, 311.990
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: This regulation delineates limits of permissible professional advertising with the aim of adequately informing the public about physician services while at the same time establishing safeguards to protect the public or any member thereof from false, fraudulent, misleading, deceptive, self-laudatory or unfair statements.

Section 1. This regulation shall apply to all physicians licensed to practice medicine or osteopathy in the Commonwealth. It shall apply in regard to all advertising of whatever type and wherever published.

Section 2. Advertising may be by any medium provided that the advertisement is not in any manner fraudulent, misleading or deceptive.

Section 3. The following may not be advertised:
(1) Testimonials of patients as to the physician's skill or the quality of his or her professional services;
(2) Claims regarding the physician's experience, competency and quality of services which imply that he or she possesses an exclusive and unique skill or remedy;
(3) Claims which cannot be readily verified by objective standards; and,
(4) Any representation expressly prohibited under KRS 311.597(2).

Section 4. An advertisement may be sent to an individual addressee only if that addressee is one of a class of persons, other than a family to whom it is sent at the same time. An advertisement may not be sent to an addressee if

prompted or precipitated by a specific event or occurrence involving or relating to the addressee as distinct from the general public.

Section 5. (1) The authorization of or use in any advertising for a physician's practice of the term "board certified" or any similar words or phrases calculated to convey the same meaning shall constitute fraudulent, misleading or deceptive advertising under this regulation unless the physician discloses the complete name of the specialty board which conferred the aforementioned certification and such specialty board is approved by the board. For purposes of this regulation, the board approves the specialty boards recognized by the American Board of Medical Specialties (ABMS), the American Osteopathic Association (AOA), or other specialty board's which may be approved by this board;

(2) A physician shall not use the term "board certified" or any similar words or phrases calculated to convey the same meaning if the claimed board certification has expired and has not been renewed at the time the advertising in question was published or broadcast.

Section 6. [5.] Violation of any provision of this regulation will be considered dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or a member thereof pursuant to KRS 311.595(8) and 311.597(2).

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: October 31, 1989
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt
(1) Type and number of entities affected: All licensees who advertise that they are board-certified in a certain medical specialty.
(a) Direct and indirect costs or savings to those affected: The regulation could both increase or decrease advertising costs to licensees as some may continue to advertise and others may decide to discontinue.
1. First year: This cannot be calculated.
2. Continuing costs or savings: This cannot be calculated.
3. Additional factors increasing or decreasing costs (note any effects upon competition): This may effect competition among licensees because a group may now advertise that they are board-certified which another group may not be able to so advertise.
(b) Reporting and paperwork requirements: Only that the licensee include the full name of the certifying body in the advertisement.
(2) Effects on the promulgating administrative body: This regulation will make it easier and more efficient for the board to police advertising of its licensees.
(a) Direct and indirect costs or savings: No direct or indirect costs or savings to the board.
1. First year: This cannot be calculated.
2. Continuing costs or savings: This cannot be calculated.
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were considered, specifically allowing unrestricted advertising, however, the board felt this regulation need be in place to protect the public.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or administrative regulation is in conflict, overlapping or duplicated by this regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The board feels the public needs the protection of this regulation to protect from misleading advertising.
TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky State Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:021. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees.

RELATES TO: KRS 311.530 to 311.620, 311.990, 311.271
STATUTORY AUTHORITY: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish standards for approval of medical and osteopathic schools, colleges and universities

in regard to the issuance and renewal of licenses and permits to practice medicine or osteopathy in the Commonwealth. The further purpose of this regulation is to assure that physicians obtain sufficient postgraduate training to enable them to practice with competency within the Commonwealth.

Section 1. Approval Necessary for Licensure. An applicant shall not obtain or retain any license or permit issued by the board unless and until the applicant provides sufficient proof that he or she is a graduate of a medical or osteopathic school, college or university which has been approved by the board. An applicant for limited licensure-institutional practice pursuant to KRS 311.571(4) may, however, be granted such licensure without the board's prior approval of the medical or osteopathic school, college or university upon sufficient proof that the particular school does exist and the applicant is a graduate thereof. No other license or permit issued pursuant to any other statutory or regulatory provision shall be issued unless and until the applicant's medical or osteopathic school, college or university has been fully approved. The school approval requirement will not be excused because information concerning the school is not readily ascertainable.

Section 2. Medical and Osteopathic Schools Located Within the United States or Canada. Unless approval is denied or withdrawn pursuant to Section 4 of this regulation, all medical and osteopathic schools, colleges and universities located in the United States or Canada are approved in regard to the issuance and renewal of licenses and permits upon written proof that the particular institution is:

(1) Located in the United States, its territories and protectorates and approved/accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association; or

(2) Located in Canada and approved/accredited by the Canadian Medical Association.

Section 3. Medical and Osteopathic Schools Located Outside the United States and Canada. Unless approval is denied or withdrawn pursuant to Section 4 of this regulation, all medical and osteopathic schools located outside the United States and Canada are approved in regard to the issuance and renewal of licenses and permits upon written proof that the particular institution is:

(1) Officially recognized in good standing by the country in which the school, college or university is located;

(2) Registered as a medical school, college or university in either the World Health Organization directory or the World Directory of Medical Schools; and

(3) Possesses a basic course of clinical and classroom medical instruction of not less than thirty-two (32) months in length that is conducted under the direct authority of the medical school, college or university.

Approval of an institution under this section should be considered in conjunction with the other requirements for licensure of graduates of medical schools, colleges and universities located outside the United States and Canada. Approval under this section should not be interpreted as a statement by the board that the particular institution is equivalent to institutions approved pursuant to Section 2 of this regulation.

Section 4. Denial or Withdrawal of Approval. The board, in its discretion, may deny or withdraw approval of any medical or osteopathic school if the particular school, college or university fails to meet the requirements for approval as established in the preceding sections or if, in the board's opinion, the approval of the particular school, college or university would not be in the best interests of the Commonwealth. If approval is denied or withdrawn the board shall issue an order delineating the grounds upon which denial or withdrawal of approval is based.

Section 5. Recognition of Degrees. The board hereby takes notice that there are medical schools located outside the United States and Canada which allow students to satisfy clinical requirements of the medical school's curriculum by performing clinical clerkships in the United States. Such clerkships shall be of a character and quality equal to those performed in the United States by students in American medical and osteopathic schools. In order to assure that the clerkships performed in this country by students enrolled in foreign medical schools are to a substantial degree equivalent to the clinical training being received by medical students in this country, the applicant must demonstrate that the clerkships meet the following standards:

(1) Each clerkship (begun after the effective date of this regulation) must have been evaluated and approved by the foreign medical school prior to commencing in accord with the foreign school's established standards for approval of clerkships performed in the United States.

(2) Seventy-five (75) percent of the clerkships performed in the United States must have been performed in hospitals that:

(a) Possess accreditation by the Joint Commission on Accreditation of Hospitals;

(b) Have residencies in the subject area of the clerkship approved by the Accreditation Council on Graduate Medical Education; and

(c) Have affiliation with a medical school located in the United States.

The board will not recognize the degree of any applicant who cannot demonstrate that the clerkships he performed in the United States met the above standards. However, the board may waive the above requirement if the applicant commenced the unapproved clerkship prior to February 12, 1985, and can present verifiable proof of satisfactory completion of an approved three (3) year postgraduate training program <u>at one (1) hospital or institution</u>, or proof of acceptance into or current enrollment in the second or third year of an approved postgraduate training program. Licensure will not be granted unless the board recognizes the applicant's degree.

Section 6. Application of KRS 311.271. (1) An applicant shall not obtain any license or permit issued by the board unless and until the applicant provides written proof that he or she has been credited with not less than sixty (60) transferable units of study by a college or

university accredited by the Southern Association of Colleges and Schools or an accrediting agency recognized by the Southern Association of Colleges and Schools; provided, however, that the executive director may determine the equivalency of premedical or preosteopathic units of study credited by a college or university located outside the United States or Canada on an individual basis.

(2) It is the declared policy of the Commonwealth that a physician, who becomes initially enrolled in a school of medicine or osteopathy after June 13, 1968, should not be authorized to practice medicine or osteopathy in this state unless and until the physician can provide satisfactory evidence that he or she has fulfilled the premedical or preosteopathic undergraduate requirement delineated in subsection (1) of this section. Therefore, the board will not issue any license or permit to an applicant except upon the fulfillment of this requirement.

Section 7. Hearings. The board, in its discretion, may direct that formal or informal hearings be held in connection with the approval, denial of approval or withdrawal of approval of any medical or osteopathic school, college or university, or in the determination of qualification pursuant to KRS 311.271.

Section 8. Amount of Postgraduate Training Required. (1) All applicants for regular licensure who are graduates of medical and osteopathic schools located within the United States or Canada shall provide written proof of having completed one (1) full year of postgraduate training approved by the board.

(2) All applicants for regular licensure who are graduates of medical and osteopathic schools located outside the United States and Canada shall provide written proof of having completed three (3) full years of postgraduate training approved by the board.

(3) All applicants for limited licensure-institutional practice shall provide written proof of having completed one (1) full year of postgraduate training approved by the board.

Section 9. Postgraduate Training Programs Approved by the Board. (1) All postgraduate training programs in hospitals and institutions located in the United States and approved by the Accreditation Council for Graduate Medical Education (ACGME) are approved by the board in regard to the fulfillment of the postgraduate training requirement for licensure.

(2) All postgraduate training programs in hospitals and institutions located in Canada and approved by the National Joint Committee on Accreditation of Preregistration Physician Training Programs in the United States or Canada are approved by the board in regard to the fulfillment of the postgraduate training requirement for licensure.

(3) All postgraduate training programs in hospitals and institutions located in the United States or Canada and approved by the American Osteopathic Association are approved by the board in regard to the fulfillment of the postgraduate training requirement for licensure.

Section 10. Fellowship Training in the United States or Canada. The board will consider on an individual basis written proof of satisfactory completion of fellowship training recognized by the board to be of satisfactory quality as substitution for the second or third year of required postgraduate training approved by the board pursuant to this regulation.

ROYCE E. DAWSON, M.D., President
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

(1) Type and number of entities affected: This regulation as amended will affect all foreign medical graduates who are required by statute to receive three years of postgraduate training in institutions in the United States.

(a) Direct and indirect costs or savings to those affected: There will be no direct or indirect cost savings to those affected as the three year requirement has not changed.

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 which would increase or decrease costs.

(b) Reporting and paperwork requirements: No reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: The amended regulation will make the task of reviewing postgraduate training more efficient and reliable.

(a) Direct and indirect costs or savings: There will be no direct or indirect cost savings to the board as the requirements have not changed.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative

methods such as allowing foreign medical graduations to complete postgraduate training at nonapproved institutions were considered but rejected as the board felt that reliable training must be received to protect the public.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation does not conflict, overlap or duplicate any statute or 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: The board feels this amendment is needed to insure foreign graduates are receiving adequate and reliable postgraduate training in American institutions.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky State Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:031. Examinations.

RELATES TO: KRS 311.530 to 311.620, 311.990

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish standards and rules regarding examination scope, content, passing scores, testing opportunities and test score recognition.

Section 1. Basic Requirement; Passing Score. All applicants for any license or permit issued by the board shall provide written proof of having successfully completed an examination approved by the board with a minimum passing score of seventy-five (75) or its numerical equivalent. The passing score must have been determined on the basis of performance in a single sitting and scores based on an average of scores from multiple sittings will not be considered. All applicants taking Component I and Component II of the FLEX must obtain a minimum score of seventy-five (75) on each component in order to be considered passing. No combination of Component I and Component II scores will be considered.

Section 2. Examinations Approved by the Board. The following examinations are approved by the board in regard to the fulfillment of the examination requirement for licensure:

(1) Examinations administered by the licensure authority of another state, United States territory or Canadian province upon sufficient proof that the examination consisted of comprehensive testing in the basic and clinical sciences;

(2) The Federation Licensure Examination (FLEX);

(3) The examination administered by the National Board of Medical Examiners; and

(4) The examination administered by the National Board of Examiners for Osteopathic Physicians and Surgeons.

The board may deny a license or permit when in the board's opinion the examination by which the applicant is seeking to fulfill the examination requirement inadequately tested the applicant's knowledge, education, training and competency.

Section 3. Examination Administered by Board. (1) The board will administer the Federation Licensure Examination (FLEX) twice yearly in accord with protocol established by the Federation of State Medical Boards of the United States, Inc. The executive director shall oversee the examination and may expel any person for fraudulent or disruptive behavior.

(2) The executive director may allow an applicant to sit for the FLEX when in his or her opinion the applicant appears to have fulfilled the appropriate eligibility requirements. Allowing an applicant to sit for the FLEX or any component thereof shall not be considered as certification that any requirement for licensure has been fulfilled.

Section 4. Eligibility for Examination. (1) An applicant shall be eligible to take both components of the FLEX if the applicant has fulfilled all other requirements for regular licensure.

(2) An applicant shall be eligible to take Component I of the FLEX if the applicant has fulfilled all other requirements for limited licensure-institutional practice.

(3) An applicant shall be eligible to take Component II of the FLEX if the applicant has previously passed Component I and has fulfilled all other requirements for regular licensure.

(4) An applicant who has not fulfilled the particular postgraduate training requirement at the time the FLEX is administered may sit for the examination upon showing that this requirement will be fulfilled within seven (7) months of the examination date.

(5) An applicant who has failed the FLEX on three (3) previous occasions may sit for the FLEX or a component thereof upon proof that the applicant has completed since the time of the applicant's last failure one (1) additional year of approved postgraduate training in addition to the number of years of postgraduate training normally required to sit for the FLEX or a component thereof.

(6) No person shall be eligible to sit for the FLEX or a component thereof if the applicant has failed the FLEX on three (3) previous occasions except as provided in subsection (5) of this section. All failures prior to June 1, 1985, and failures thereafter of the FLEX components shall be added together to determine an applicant's total number of prior failures. An applicant who by a combination of failures of the entire exam, whenever given, and components thereof has accumulated three (3) failures of the entire exam or a component thereof shall be ineligible to sit for the exam or any component thereof except as provided in subsection (5) of this section.

Section 5. Recognition of Passing Scores by Endorsement. The board will not recognize a passing score of the FLEX by endorsement if the applicant <u>who by a combination of failures of the entire exam, whenever given, and components thereof has accumulated three (3) failures of</u>

the entire exam [failed the FLEX or a component thereof on a total of three (3) previous occasions, wherever taken]. The board will recognize a passing score on an applicant's fourth attempt upon proof that the applicant has obtained since the third failure one (1) additional year of approved postgraduate training in addition to the number of years of postgraduate training normally required for the type of licensure the applicant seeks.

ROYCE E. DAWSON, M.D., President
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt
(1) Type and number of entities affected: This regulation as amended will affect those applicants who have not successfully passed examinations approved by the board on their first two attempts.
(a) Direct and indirect costs or savings to those affected: This regulation may save applicants examination fees as the regulation now approves of combining component examination scores.
1. First year: Approximately $400 per applicant (exam fee).
2. Continuing costs or savings: Approximately $400 per applicant (exam fee).
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: If component scores result in passing score, applicant would not have to again sit for the examination.
(2) Effects on the promulgating administrative body: If component scores result in passing score, the board would not have to again administer the examination.
(a) Direct and indirect costs or savings: The direct costs or savings would result in the board not having to administer the examination which entails exam site rental and staff monitoring.
1. First year:
2. Continuing costs or savings: Costs saved on annual basis if examination does not need to be administered.
3. Additional factors increasing or decreasing costs: Staff monitoring time and no need to rent or secure outside examination sites.
(b) Reporting and paperwork requirements: Reporting and paperwork requirements would be lessened as examination would be decreased significantly.
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues that this board was able to determine.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were considered, specifically not allowing combination of component scores, but the board felt these would be unduly harsh and result in qualified applicants being denied licensure in Kentucky.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict, overlapped or duplicated by this regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The board feels this regulation adequately addresses the examination requirement.
TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky State Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:041. Fee schedule.

RELATES TO: KRS 311.530 to 311.620, 311.990
STATUTORY AUTHORITY: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish a schedule of fees for services rendered by the board.

Section 1. Fee Schedule.
(1) Fee for sitting for both components of examination administered by board - $450.
(a) Component I - $225.
(b) Component II - $275.
(2) Fee for initial issuance of regular license - $150.
(3) Fee for initial issuance of limited license - $65.
(4) Fee for annual registration or renewal of any license - $65.
(5) Penalty for late annual registration or renewal:
(a) March 1 - April 1 - $25.
(b) After April 1 - $100.
(6) Fee for reregistration of inactive license - $90.
(7) Endorsement of licensee to licensing agency of another jurisdiction - $20.
(8) Certification of licensee's examination

grades to licensing agency of another jurisdiction - $10.

(9) Fee for temporary permit (credited to fee for regular license if subsequently issued) - $50.

(10) Fee for emergency permit - $15.

(11) Fee for duplicate license certificate - $10.

(12) Fee for copy of "Kentucky Medical Directory" [(fee waived for licensees, hospitals, schools and other licensure boards)] - $10.

(13) Fee for one (1) year subscription to Newsletter (fee waived for licensees) - $5.

(14) Fee for license application - $25.

(15) Fee for sitting for competency examination administered by board - $275.

ROYCE E. DAWSON, M.D., President

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

(1) Type and number of entities affected: This regulation will affect all licensees who request a medical directory, application for licensure or who are required to take a competency examination.

(a) Direct and indirect costs or savings to those affected: There will be a cost of $10 for a directory, a $25 application fee and $275 for a sitting at a board-mandated competency examination.

1. First year: Costs cannot be adequately calculated.

2. Continuing costs or savings: These costs will continue to be incurred by the licensees who require the service listed above.

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: No additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation will allow the board to recoup its costs associated with the medical directory, application review and administering a competency examination.

(a) Direct and indirect costs or savings: Mailing, postage, shipping costs and examination costs can all be recouped by this regulation.

1. First year: Savings cannot be adequately calculated.

2. Continuing costs or savings: Savings would be continuous annually as long as costs incurred by the board did not increase.

3. Additional factors increasing or decreasing costs: No additional factors which would increase or decrease costs.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: This regulation would increase the board's income which in turn would effect the General Fund and state and local taxes.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were considered, specifically providing these services at no cost, but the board decided that the board's budget could not withstand such alternatives.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict, overlapping or duplicated by this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: The board is not making money by this regulation, they only wish to recoup their costs in providing these services.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky State Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:081. Disciplinary proceedings.

RELATES TO: KRS 311.530 to 311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565

NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to set forth the procedures to be followed in handling formal and informal disciplinary proceedings before the board or before any committee to the board, such that the proceedings will be conducted with due regard for the rights and privileges of all affected parties.

Section 1. Scope. This regulation shall govern practice and procedure in regard to all disciplinary matters before the Kentucky Board of Medical License pursuant to KRS 311.530, et seq.

Section 2. Definitions. (1) "Executive director" means the executive director of the board or any assistant executive directors appointed by the board.

(2) "General counsel" means the general counsel of the board or any assistant general counsel appointed by the board.

(3) "Board" means the Kentucky Board of Medical Licensure or its inquiry and/or hearing panels.

(4) "Grievance" means any allegation in whatever form alleging misconduct by a physician.

(5) "Charge" means a specific allegation contained in any document issued by the board or its inquiry or hearing panels alleging a violation of a specified provision of the Kentucky Medical and Osteopathic Practice Act.

(6) "Complaint" means a formal administrative pleading authorized by the inquiry panel that sets forth charges against a physician and commences a formal disciplinary proceeding.

(7) "Show cause order" means an order directing the named physician to show cause why the board should or should not take a specified action based on specified information which the order alleges to be true.

(8) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any complaint or show cause order.

(9) "Informal proceedings" means proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal dispensation of any matter without further recourse to formal disciplinary procedures.

(10) "Act" means the Kentucky Medical and Osteopathic Practice Act.

Section 3. Reception of Grievances; Investigations. (1) Grievances may be submitted by any individual, organization or entity. The board shall retain a written form upon which grievances may be made and any party submitting a grievance may be required to complete the form and may also be required to give their affidavit acknowledging the truth and veracity to the best of their knowledge and belief of the information contained in the grievance.

(2) All grievances shall be investigated as necessary and presented to the inquiry panel for review unless the circumstances of a particular grievance make it impossible to timely present the grievance to the inquiry panel. The inquiry panel shall have the authority to direct any investigation and shall possess any and all powers possessed by the board in regard to investigations. The inquiry panel shall further be empowered to request the attendance of any person at any meeting of the inquiry panel in regard to the investigation of any grievance or consideration of any disciplinary matter. The failure, without good cause, of any physician licensed to practice medicine or osteopathy by the board to appear before the inquiry panel when requested shall be considered unprofessional conduct.

(3) The inquiry panel shall be empowered to request compliance with the reporting requirements of KRS 311.605-311.606 and may pursue investigations, on its own initiative, in regard to acts of noncompliance or any other perceived violation of the Act.

Section 4. Reports and Recommendations; Petitions. (1) When in the opinion of the inquiry panel a grievance warrants the issuance of a complaint against a physician, the inquiry panel shall cause a complaint to be prepared together with a petition, signed by the chairman or vice chairman on behalf of the inquiry panel, stating the inquiry panel's belief that the charges are based upon reliable information.

(2) When in the opinion of the executive director a grievance warrants the issuance of a complaint against a physician and circumstances do not allow the timely presentation of the grievance to the inquiry panel, the executive director shall cause a complaint to be prepared together with a petition, signed by the executive director, stating the executive director's belief that the charges are based upon reliable information and requesting the inquiry panel to authorize the issuance of the complaint.

(3) When in the opinion of the executive director or the inquiry panel a disciplinary matter warrants the issuance of a show cause order against a physician, the executive director or the inquiry panel shall cause a proposed order to be prepared together with a petition briefly delineating a basis for the issuance of the show cause order.

(4) The board, on its own initiative, may issue a show cause order against a physician in regard to any application for licensure, obtaining, retaining or reobtaining licensure.

(5) Nothing in this subsection shall be construed to limit the board's power to deny a license to any applicant without a prior hearing upon a finding that the applicant has violated any provision of the Act.

Section 5. Complaints. (1) The complaint shall be signed and dated. The complaint shall be styled in regard to the matter of the license to practice in the Commonwealth of Kentucky held by the named physician and shall be designated with an appropriate case number.

(2) The complaint shall set forth the board's jurisdiction in regard to the subject matter of the complaint and shall further set forth, in numerical paragraphs, sufficient information to apprise the named physician of the general nature of the charges.

Section 6. Show Cause Orders. (1) The show cause order shall be signed by an officer of the board and shall be dated. The show cause order shall be styled in regard to the license, application for license or application for renewal, registration or reregistration of license to practice in the Commonwealth of Kentucky held by or submitted by the named physician, appropriately, and shall be designated with an appropriate order number.

(2) The show cause order shall set forth the board's jurisdiction in regard to the subject matter of the order and shall further set forth, in numerical paragraphs, the information which the board accepts to be true and the statutory basis for the board's finding that grounds exist for the discipline of the named physician's license or for the denial of the named physician's application for obtaining, retaining or reobtaining licensure appropriately.

(3) The show cause order shall direct the named physician to show cause why disciplinary action should not be taken in view of the matters expressed in the order. The order may direct the named physician to appear at a designated time and place, provided that the named physician receives notice at least thirty (30) days prior to the hearing.

Section 7. Orders to Respond. Upon issuance of a complaint the inquiry panel shall issue an order directing the charged physician to respond within thirty (30) days after receiving notice of the complaint, and informing the physician that failure to respond may be taken by the board as an admission of the charges.

Section 8. Orders of Temporary Restriction. (1) An order temporarily suspending, limiting or restricting the license held by the named physician shall set forth the grounds which the inquiry panel believes support a finding that sufficient reasonable cause exists to believe that the continued unaffected practice by the named physician would constitute a danger to the health, welfare and safety of the physician's patients or of the general public.

(2) Except in extraordinary circumstances when the demands of time and circumstances do not allow, at least ten (10) days prior to consideration by the inquiry panel the named physician shall be notified of the nature of the charges. The charged physician may respond to the charges informally, either orally or in writing, and the inquiry panel shall consider the response.

Section 9. Notice and Service of Process. (1) Any notice required by the Act or this regulation shall be in writing, dated and signed by the appropriate person.

(2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail to the physician's last known address of which the board has record or by such service on the named physician's attorney of record. Failure of the named physician to receive actual notice after execution of the prescribed service shall not prejudice the board from pursuing proceedings that result in the denial or discipline of the named physician's license.

Section 10. Hearings Pursuant to Order Temporarily Suspending, Limiting or Restricting a License. (1) A physician whose license has been temporarily suspended, limited or restricted shall, upon written request, be accorded hearing on the board's order within fifteen (15) days after making the request unless otherwise agreed. The hearing shall be limited to the sole purpose of determining whether the board's order was based on sufficient reasonable cause, provided, however, that the charged physician shall have the right to present evidence that indicates that the information upon which the board based its order was untrue or that the danger that existed at the time the order was issued has since been dissipated or alleviated.

(2) Any findings of fact or conclusions of law rendered by the hearing officer pursuant to a hearing on an order of temporary discipline shall not be binding upon the hearing panel in its ultimate determination regarding the charges contained in the complaint, nor shall the hearing officer thereafter be prejudiced from presiding at the hearing on the complaint.

(3) At the hearing on the order of temporary discipline, the hearing officer may entertain any motion timely submitted in regard to any matter concerning the disciplinary case, provided, however, that any orders issued pursuant to such motions shall not be considered appealable.

(4) Either party to the hearing on the order of temporary discipline may petition the hearing panel to review the order of the hearing officer either sustaining, modifying or withdrawing the inquiry panel's order by filing a written petition delineating those aspects of the hearing officer's determination with which the party takes exception and requesting the hearing panel to review the hearing officer's determination. The hearing panel may grant or deny review in its discretion.

(5) Nothing in this section shall be construed to limit either party's right to appeal an order sustaining, modifying or withdrawing an order of temporary discipline to the circuit court of the county in which the board's offices are located as provided by statute. However, the filing of an appeal shall not prejudice the board's jurisdiction to continue the proceeding in regard to the charges contained in the complaint.

Section 11. Proceedings Pursuant to the Issuance of a Complaint or Show Cause Order. (1) Appointment of hearing officer. The board shall appoint a hearing officer who is empowered to preside at any and all proceedings, to rule upon all motions and objections, to prepare and submit proposed findings of fact, conclusions of law and disciplinary measures to the board and to perform any other act necessary to the proper conduct of the proceedings.

(2) Appointment of the prosecuting attorney. The board's general counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding, provided, however, that the board may appoint special prosecuting attorneys in its discretion. The prosecuting attorney shall not participate in [be present during] any deliberations of the board pursuant to the issuance of a complaint, show cause order or order of temporary discipline [unless otherwise agreed to by the charged physician].

(3) Appointment of advisory counsel. The board may appoint a representative of the Attorney General's office, the board's general counsel, or other attorney to act as advisory counsel to the board in regard to any deliberations of the board pursuant to the issuance of a complaint, show cause order or order of temporary discipline[, provided, however, that an attorney may not act as advisory counsel if the attorney was substantively involved in the investigation or prosecution of the matter before the board].

(4) Form of pleadings; service. Pleadings may be in any neat form provided that all pleadings must be dated and signed by the offering party. The original of all pleadings must be filed with the executive director for entry into the official record and copies must be served on the hearing officer, the opposing party and any other person who might be designated by the hearing officer.

(5) Prehearing conferences. Upon motion of either party or upon his or her own initiative, the hearing officer may order that a prehearing conference be held. The prehearing conference may be the forum for consideration of any matter properly before the hearing officer including all motions, discovery, stipulations, identification of issues, dates of future proceedings and objections.

(6) Discovery. Either party may at any time after the issuance of a complaint or show cause order move the hearing officer to order that

discovery from the other party be allowed by any of the following methods:

(a) Oral deposition, provided, however, that either party shall have the right to move the hearing officer to order that the deposition be entered into the record in lieu of further testimony by the witness;

(b) Request for a more definite statement;

(c) Request for production of names of witnesses, documents and other demonstrative evidence; and

(d) Request for a brief synopsis of the testimony expected to be given by any expert witness.

The hearing officer may limit or allow discovery of any matter relevant to the issues and may issue protective orders as necessary.

(7) Hearings. Hearings shall proceed in accordance with the rules of examination applicable in courts of law in the Commonwealth. The rules of evidence applicable in courts of law in the Commonwealth shall apply, provided, however, that hearsay evidence shall be admissible unless irrelevant or grossly prejudicial. The order and burden of proof shall be established by the hearing officer, provided, however, that the burden of proof shall be upon the charged physician in any hearing on the charges contained in a show cause order. The hearing officer shall rule upon any motions or objections and may require the submission of briefs in regard to any issue. The hearing officer may allow opening and closing statements by either party, or other offers of prosecution or defense that will allow the orderly and expeditious conduct of the proceedings.

(8) Record. The hearing officer shall be charged with the responsibility of compiling a written record of the proceedings which shall contain all evidence introduced at the hearing and all pleas, motions, objections, responses, rulings and other legal documents which the hearing officer deems properly part of the record.

(9) Presentation of record, hearing officer's proposed findings, conclusions and recommendations. The hearing officer shall present the record, his or her proposed findings of fact, conclusions of law and recommendations to the executive director for deliberation by the hearing panel. The hearing officer shall serve a copy of his findings, conclusions and recommendations on all parties at least twenty (20) days prior to the date set for the hearing panel's final determination. All parties shall have the right to file exceptions to the hearing officer's findings, conclusions and recommendations ten (10) days prior to the date set for the hearing panel's final determination.

(10) Briefs. Any party to the proceeding may move the hearing officer to allow briefs to be filed with the hearing panel prior to the hearing panel's final determination. The hearing officer may grant the motion and establish a briefing schedule but only if the hearing officer believes that such a procedure would substantially aid the hearing panel in its deliberations. Briefs shall not exceed five (5) pages in length unless otherwise allowed by the hearing officer. The hearing panel may, on its own initiative, order that briefs be submitted.

(11) Oral argument. Any party to the proceeding may move the hearing panel to allow oral argument prior to the hearing panel's final determination. The hearing panel may order oral arguments on its own initiative.

(12) Board's findings of fact, conclusions of law and final order, remand. At the conclusion of its deliberations the hearing panel may adopt the hearing officer's proposed findings, conclusions and recommendations of action in whole or in part or may reject them totally and prepare its own. The hearing panel shall enter a final order dated and signed by an officer of the hearing panel stating its ultimate determination. Prior to, during or subsequent to any deliberations the hearing panel may remand the matter to the hearing officer for further proceedings as directed.

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: October 31, 1989
FILED WITH LRC: November 14, 1989 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on December 21, 1989 at 10 a.m. at the Office of the Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by December 16, 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 regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you do not wish to attend this hearing, you may submit written comments on the proposed regulation. Send notification of intent to attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

(1) Type and number of entities affected: All physicians against whom disciplinary charges have been brought and an adversarial hearing held.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs to those physicians.

1. First year: No costs or savings contemplated.

2. Continuing costs or savings: No costs or savings contemplated.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This will allow the board to effectively utilize their General Counsel while not harming the physician's right.

(a) Direct and indirect costs or savings: The board will no longer need to hire advisory counsel from Attorney General's office except in exceptional cases.

1. First year: Cannot be adequately calculated.

2. Continuing costs or savings: These savings would continue on an annual basis.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(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: Alternatives considered, specifically leaving regulation as is, however, the board felt the regulation too cumbersome and not-cost effective.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict, overlapping or duplicated by this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: The board feels this regulation will allow them to effectively utilize their general counsel.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Board of Examiners and Registration of Landscape Architects
(Proposed Amendment)

201 KAR 10:010. Duties of board.

RELATES TO: KRS 323A.210

STATUTORY AUTHORITY: KRS 323A.210

NECESSITY AND FUNCTION: KRS 323A.210 requires the board to keep complete and accurate records and this regulation is fashioned to require the board secretary to be responsible for accurate and complete records of all board transactions, with a board appointed executive director to be responsible for administrative functioning of the board.

Section 1. Duties of the Board. (1) The board secretary shall [will] be responsible for accurate and complete records of all transactions of the board.

(2) The board shall [will] appoint an executive director who will be responsible for the administrative functioning of the board.

(3) The executive director shall forward a copy of the [rules and] regulations and a copy of the Act along with all applications to the applicants.

JOHN L. CARMAN, President

APPROVED BY AGENCY: October 25, 1989

FILED WITH LRC: October 31, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation will be held on December 22, 1989 at the hour of 10 a.m. at the Offices of the Kentucky State Board of Examiners and Registration of Landscape Architects, Route #3, 96-5 Millville Road, Frankfort, Kentucky 40601. Any person interested in commenting on this regulation at that hearing should contact Greg Holmes, Assistant Attorney General, State Capitol, Frankfort, Kentucky 40601 in writing by December 17, 1989.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Holmes

(1) Type and number of entities affected: 180 licensees.

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

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: Minimal

(2) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? Not applicable because there is only one classification of persons to which these regulations apply.

GENERAL GOVERNMENT CABINET
Board of Examiners and Registration of Landscape Architects
(Proposed Amendment)

201 KAR 10:030. Code of ethics.

RELATES TO: KRS 323A.010, 323A.020, 323A.040, 323A.080, 323A.100, 323A.110, 323A.120, 323A.210

STATUTORY AUTHORITY: KRS 323A.210

NECESSITY AND FUNCTION: KRS 323A.210 authorizes the board to adopt reasonable regulations not inconsistent with the act but which are necessary to carry into effect the purposes of the act. This code of ethics is intended to establish guidelines for the landscape architects practicing in the state and for the protection of the public they will be serving.

Section 1. Code of Ethics. (1) This code of professional ethics is hereby promulgated by the board as guidelines for the profession of landscape architecture in Kentucky. A violation of the duties and obligations herein set out shall be considered unprofessional conduct.

(2) The landscape architect shall conduct his practice in order to protect the life, health, property and welfare of the public and shall at all times recognize that his primary obligation is to protect the life, health, property and welfare of the public in the performance of his professional duties. If his landscape architectural judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, he shall

inform his employer of the possible consequences and notify such other proper authority of the situation, as may be appropriate.

(3) The landscape architect shall perform his services only in areas of his competence.

(a) The landscape architect shall undertake to perform landscape architectural assignments only when qualified by education or experience in the specific technical field of professional landscape architecture involved.

(b) The landscape architect may accept an assignment requiring education or experience outside of his own field of competence, but only to the extent that his services are restricted to those phases of the project in which he is qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees.

(c) The landscape architect shall not affix his signature and/or seal to any landscape architectural plan or document dealing with subject matter to which he lacks competence by virtue of education or experience, nor to any such plan or document not prepared under his direct supervisory control.

(d) In the event a question arises as to the competence of a landscape architect to perform a landscape architectural assignment in specific technical field of landscape architecture which cannot be otherwise resolved to the board's satisfaction, the board, either upon request of the landscape architect or by its own volition, may require him to submit to an appropriate examination as determined by the board.

(4) The landscape architect shall issue public statements only in an objective and truthful manner.

(a) The landscape architect shall be completely objective and truthful in all professional reports, statements or testimony. He shall include all relevant and pertinent information in such reports, statements, or testimony.

(b) The landscape architect, when serving as an expert or technical witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his testimony.

(c) The landscape architect shall [will] issue no statements, criticisms, or arguments on landscape architectural matters connected with public policy which are inspired or paid for by an interested party, or parties, unless he has prefaced his comment by explicitly identifying himself, by disclosing the identities of the party or parties on whose behalf he is speaking, and by revealing the existence of any pecuniary interest he may have in the instant matters.

(5) The landscape architect shall avoid conflicts of interest.

(a) The landscape architect shall avoid all conflicts of interest with his employer or client and shall promptly inform his employer or client of any business association, interests, or circumstances which could influence his judgment or the quality of his services.

(b) The landscape architect shall not accept compensation, financial or otherwise, from more than one (1) party for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

(c) The landscape architect shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.

(d) The landscape architect shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with his client or employer in connection with work for which he is responsible.

(e) When in public service as a member, advisor, or employee of a governmental body or department, the landscape architect shall not participate in considerations or actions with respect to services provided by him or his organization in private landscape architectural practices.

(f) The landscape architect shall not solicit or accept a landscape architectural contract from a governmental body on which a principal or officer of his organization serves as a member.

(g) The landscape architect shall not attempt to supplant another landscape architect after definite steps have been taken by a client toward the latter's employment; nor shall he undertake a commission for which another landscape architect has been employed without first conclusively determining that the latter's employment has been terminated.

(6) The landscape architect shall solicit or accept work only on the basis of his qualifications.

[(a) The landscape architect shall not engage in commercial advertising.]

(a) [(b)] The landscape architect shall not offer to pay, either directly or indirectly, any commission, political contribution, or a gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.

(b) [(c)] The landscape architect shall seek professional employment on the basis of qualification and competence for proper accomplishment of the work.

(c) [(d)] The landscape architect shall not falsify or permit misrepresentation of his, or his associates', academic or professional qualifications. He shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work.

(7) The landscape architect shall associate only with reputable persons or organizations.

(a) The landscape architect shall not knowingly associate with or permit the use of his name or firm in a business venture by any person or firm which he knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature, or in violation of these [rules and] regulations.

(b) If the landscape architect has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or KRS Chapter 323A, he shall present such information to the board in writing and shall cooperate with the board in furnishing such further information or assistance as may be required by the board.

[(8) Conviction of a felony involving moral turpitude, a finding of mental incompetency by a

court of competent jurisdiction, or the revocation or suspension of a professional landscape architect's license by another jurisdiction if for a cause which in the Commonwealth of Kentucky would constitute a violation of the law or of these rules, shall be grounds for a charge of violation of these rules.]

JOHN L. CARMAN, President
APPROVED BY AGENCY: October 25, 1989
FILED WITH LRC: October 31, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this proposed regulation will be held on December 22, 1989 at the hour of 10 a.m. at the Offices of the Kentucky State Board of Examiners and Registration of Landscape Architects, Route #3, 96-5 Millville Road, Frankfort, Kentucky 40601. Any person interested in commenting on this regulation at that hearing should contact Greg Holmes, Assistant Attorney General, State Capitol, Frankfort, Kentucky 40601 in writing by December 17, 1989.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Holmes
(1) Type and number of entities affected: 180 licensees.
(a) Direct and indirect costs or savings to those affected: Minimal
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: Minimal
(2) Effects on the promulgating administrative body: Minimal
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Not applicable because there is only one classification of persons to which these regulations apply.

GENERAL GOVERNMENT CABINET
Board of Examiners and Registration of Landscape Architects
(Proposed Amendment)

201 KAR 10:040. Applications.

RELATES TO: KRS 323A.040, 323A.050, 323A.060, 323A.070
STATUTORY AUTHORITY: KRS 323A.210
NECESSITY AND FUNCTION: KRS 323A.210 authorizes the board to adopt all reasonable regulations and this regulation is intended to establish procedures for the filing and processing of applications for registration as landscape architects in this state.

Section 1. Applications. (1) Applications for registration as a landscape architect <u>may</u> [will] be received at any time during regular business hours at the office of the board. But applications for written examinations shall be filed with the prescribed fee in such office at least six (6) weeks prior to the opening date of the examinations.
(2) All fees payable by applicants shall accompany the applications.
(3) The board reserves the right to request additional information, including a personal appearance, from each applicant together with any necessary documentary evidence in cases where questions concerning qualifications may arise. Personal appearances before the board shall be at a time and place designated by the board.
(4) The board reserves the right to retain any and all documents submitted as evidence of qualifications for registration. Photostatic copies of original documents may be submitted if notarized as true copies.
(5) Failure to comply with a written request from the board for additional evidence or information or to appear before the board when deemed necessary within sixty (60) days of such notice may be sufficient and just cause for the disapproval of the application.
(6) Members of the board may not serve as personal references; however, they may be listed as persons who have supervised the work of the applicant.
(7) The board reserves the right to exercise the discretion provided in the act by requiring the applicants to qualify by either:
(a) Passing the regular written or written and oral examinations; or
(b) Having a satisfactory examination record from another state, providing it is deemed equal in all respects to that given in Kentucky.
(8) All applicants who seek registration under KRS 323A.050(1) shall submit satisfactory proof of registration in good standing in any state or states of present registration and shall indicate whether registration was obtained under a grandfather clause or by examination or other means in the particular state in which registration was granted.
(9) All applicants shall be considered individually by the board and passed or rejected by a roll call vote. The action taken by the board shall be recorded in the minutes. Approval of an applicant will require a majority vote of the board.
[(10) All applications for registration under KRS 323A.050(2) must have been received by the board no later than February 1, 1974.]
<u>(10)</u> [(11)] An outline of the action taken by the board shall be placed with each application.
<u>(11)</u> [(12)] The board reserves the right to establish or change the classification under which the applicant is claiming eligibility.
<u>(12)</u> [(13)] Military experience shall be acceptable to the board provided it has been spent in landscape architecture as defined in the Act.
<u>(13)</u> [(14)] The sales and installation of products such as landscape materials (plants and construction) <u>shall not</u> [cannot] be considered

professional services. Any plans or sketches drawn by the same person solely for the promotion and sale of his own products shall not [cannot] be considered professional services.

JOHN L. CARMAN, President
APPROVED BY AGENCY: October 25, 1989
FILED WITH LRC: October 31, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this proposed regulation will be held on December 22, 1989 at the hour of 10 a.m. at the Offices of the Kentucky State Board of Examiners and Registration of Landscape Architects, Route #3, 96-5 Millville Road, Frankfort, Kentucky 40601. Any person interested in commenting on this regulation at that hearing should contact Greg Holmes, Assistant Attorney General, State Capitol, Frankfort, Kentucky 40601 in writing by December 17, 1989.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Holmes
(1) Type and number of entities affected: 180 licensees.
(a) Direct and indirect costs or savings to those affected: Minimal
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: Minimal
(2) Effects on the promulgating administrative body: Minimal
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Not applicable because there is only one classification of persons to which these regulations apply.

GENERAL GOVERNMENT CABINET
Board of Examiners and Registration of Landscape Architects
(Proposed Amendment)

201 KAR 10:060. Renewals.

RELATES TO: KRS 323A.020, 323A.060, 323A.100
STATUTORY AUTHORITY: KRS 323A.100, 323A.210
NECESSITY AND FUNCTION: KRS 323A.100 requires all landscape architects desiring to continue practice to secure a renewal certificate each year and this regulation is designed to set forth the procedure and fix the fees as allowed under KRS 323A.060.

Section 1. Administration. (1) A renewal notice shall be sent to all license holders on May 1 of each year. The application for renewal shall be due on or before June 30 of each year.
(2) Failure to renew within the sixty (60) day grace period as stipulated in the law shall [will] automatically cause the license to expire.
(3) Before issuing any license or renewal, the board shall collect from the person licensed the full amount of all fees due in accordance with KRS 323A.060 or 323A.100.

JOHN L. CARMAN, President
APPROVED BY AGENCY: October 25, 1989
FILED WITH LRC: October 31, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this proposed regulation will be held on December 22, 1989 at the hour of 10 a.m. at the Offices of the Kentucky State Board of Examiners and Registration of Landscape Architects, Route #3, 96-5 Millville Road, Frankfort, Kentucky 40601. Any person interested in commenting on this regulation at that hearing should contact Greg Holmes, Assistant Attorney General, State Capitol, Frankfort, Kentucky 40601 in writing by December 17, 1989.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Holmes
(1) Type and number of entities affected: 180 licensees.
(a) Direct and indirect costs or savings to those affected: Minimal
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: Minimal
(2) Effects on the promulgating administrative body: Minimal
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Not applicable because there is only one classification of persons to which these regulations apply.

GENERAL GOVERNMENT CABINET
Board of Registration for Professional Engineers & Land Surveyors
(Proposed Amendment)

201 KAR 18:040. Fees.

RELATES TO: KRS 322.040, 322.090, 322.100, 322.110, 322.120, 322.140, 322.150, 322.160,

322.420
STATUTORY AUTHORITY: KRS 322.090, 322.100, 322.120, 322.140, 322.290, 322.420
NECESSITY AND FUNCTION: KRS Chapter 322 gives the board certain authority to fix fees, and this is intended to outline fees covering various steps of application, examination, certification, registration and/or renewal fees.

Section 1. Fees. (1) The license fee under KRS 322.040 shall be $195 [115], of which thirty (30) [seventy-five (75)] dollars is payable on application. If approved, the fee for examination will be $120. The license fee under KRS 322.120 shall be $150 [100] all of which is payable on application. The amounts specified as application fees should accompany each application; fees specified as examination fees must be received in the board office at least two (2) weeks prior to the examination date. All fees [and] shall be transmitted by check or money order made payable to "Kentucky State Registration Board."
(2) These fees will be retained by the board as nonrefundable [application] fees[, the same to be credited to the applicant when and if a license is granted].
(3) If approved under KRS 322.120 the license certificate will be issued without further fee, and if under KRS 322.040, it will be issued upon receipt by the board of the final payment of forty-five (45) [forty (40)] dollars, representing the balance of the total licensing fee of $195 [115].
(4) Only one (1) complete application form is required for a license in any one or more branches of engineering or land surveying. However, an updating of the application and an additional examination [application] fee of $120 [seventy-five (75)] dollars and an additional forty-five (45) [forty (40)] dollar final fee is required for each additional branch of engineering or section of the law under which the applicant subsequently applies for licensing. The update must stress the work experience the applicant has had in the branch he wishes to add.
(5) The application fee to take the engineer in training examination and the land surveyor in training examination shall be forty (40) dollars.
(6) The annual renewal fee for the license of a professional engineer or a professional land surveyor is thirty-five (35) dollars. License renewal shall be on a biannual basis.
(7) The fee for reinstatement of an expired license is $350.
(8) The fee for verifying a registrants licensure to another state or jurisdiction is ten (10) dollars.

JOSEPH F. SISLER, Chairman
APPROVED BY AGENCY: July 21, 1989
FILED WITH LRC: November 15, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this proposed amendment to 201 KAR 18:040 shall be held on December 21, 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 December 16, 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: 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: License fee under KRS 322.120 will affect approximately 400 applicants in the first year and continuing in the amount of $50 each. License fees under KRS 322.040 will affect approximately 400 applicants in the first year and continuing in the increased amounts of $50 each. Renewal fees will affect approximately 5000 registrants annually in the increased amount of $15 per license.
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: N/A
(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: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(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 on the regulation will affect all classes of applicants and registrants equally.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:050. Luther Luckett Correctional Complex.

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 November 15 [July 14], 1989 and hereinafter should be referred to as Luther Luckett Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

LLCC 01-08-01	Institutional Legal Assistance
LLCC 01-09-01	Public Information and News Media Access
LLCC 01-12-01	Duty Officer Responsibilities
LLCC 02-01-02	Fiscal Management: Accounting Procedures
LLCC 02-01-03	Fiscal Management: Agency Funds
LLCC 02-01-04	Fiscal Management: Insurance
LLCC 02-03-01	Fiscal Management: Audits
LLCC 02-06-01	Property Inventory
LLCC 02-07-01	Screening Disbursements from Inmate Personal Accounting
LLCC 08-01-01	Offender Records
LLCC 08-04-01	Storage of Expunged Records
LLCC 08-05-01	Psychological and Psychiatric Reports
LLCC 10-03-09	Duties and Responsibilities of Building 1 and 2 Officer
LLCC 11-03-01	LLCC Population Categories
LLCC 11-07-01	Adjustment Procedures for Minor Rule Violations
LLCC 11-09-01	Rules and Regulations of the Unit
LLCC 11-13-01	Inmate Dress and Use of Access Areas
LLCC 11-15-01	Postparole Furloughs
LLCC 11-16-01	Restoration of Forfeited Good Time
LLCC 11-18-02	Use of Monitor Telephone
LLCC 11-19-01	Unit Shakedowns/Control of Excess Property
LLCC 11-20-01	Program Services for "Special Needs"/Mentally Ill Inmates
LLCC 12-01-01	Special Management Inmates
LLCC 12-01-02	Disciplinary Segregation Time Calculation (WTR)
LLCC 12-04-01	Guidelines for (7E) PC Unit/General Living Conditions
LLCC 13-01-01	Dining Room Guidelines
LLCC 13-04-01	Food Service: Meals
LLCC 13-04-02	Food Service: Menu, Nutrition and Special Diets
LLCC 13-05-02	Medical Screening of Food Handlers
LLCC 13-06-01	Food Service: Inspections and Sanitation
LLCC 13-07-01	Food Service: Purchasing, Storage and Farm Products
LLCC 13-08-01	OJT Food Service Training Placement
LLCC 14-01-01	Sanitation, Living Condition Standards, and Clothing Issue
LLCC 14-05-01	Institutional Inspections
LLCC 15-01-01	Health Maintenance Services; Sick Call and Pill Call
LLCC 15-02-01	Mental Health/Psychological Services
LLCC 15-03-01	Pharmacy
LLCC 15-03-02	Use of Psychotropic Medications
LLCC 15-04-01	Dental Services
LLCC 15-05-02	Licensure and Training Standards
LLCC 15-06-02	Specialized Health Services
LLCC 15-06-03	Emergency Medical/Dental Care Services
LLCC 15-06-04	First Aid/CPR Training Program
LLCC 15-06-05	Suicide Prevention and Intervention Program
LLCC 15-07-01	Health Records
LLCC 15-08-01	Special Diets
LLCC 15-12-01	Special Needs Unit
LLCC 15-14-01	Informed Consent
LLCC 15-15-01	Medical Restraints
LLCC 15-16-01	Health Education/Special Health Programs
LLCC 15-17-01	Serious and Infectious Diseases
LLCC 16-01-01	Inmate Rights and Responsibilities
LLCC 16-02-01	Inmate Grievance Procedure
LLCC 16-03-01	Inmate Legal Services
LLCC 17-01-01	Due Process/Disciplinary Procedure
LLCC 18-01-01	Inmate Correspondence [(Amended 7/14/89)]
LLCC 18-01-02	Issuance of Legal Mail to Inmate Population
LLCC 18-02-01	Inmate Visiting (Amended 11/15/89)
LLCC 18-02-03	Extended Visit and Furloughs
LLCC 18-02-04	Meritorious Visits (Amended 11/15/89)
LLCC 18-03-01	Entry and Identification of Visitors for Inmate Visitation (Amended 11/15/89)
LLCC 18-03-03	Inmate Visiting (DSU/ASU)
LLCC 20-01-01	Personal Property Control
LLCC 20-02-01	Authorized Inmate Personal Property [(Amended 7/14/89)]
LLCC 20-03-01	Unauthorized Items
LLCC 20-04-02	Inmate Canteen
LLCC 20-05-01	Inmate Control of Personal Funds
LLCC 20-05-02	Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
LLCC 20-06-01	Procedure for Sending Appliances to Outside Dealers for Repair
LLCC 21-02-01	Classification/Security Levels
LLCC 21-03-01	Classification Process
LLCC 22-01-01	OJT/Job Assignments
LLCC 23-01-01	Academic School
LLCC 26-01-01	Religious Services
LLCC 28-01-01	Privileged Trips
LLCC 28-03-01	Temporary Release/Community Center Release
LLCC 28-04-01	Preparole Progress Report
LLCC 28-04-02	Parole Eligibility Dates

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 22, 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: 283 employees of the Luther Luckett Correctional Complex, 1034 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

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

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. This regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on November 15, 1989 [July 14, 1988] and hereinafter should be referred to as Bell County Forestry Camp Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

BCFC 01-02-01	Organization and Assignment of Responsibility (Amended 11/15/89)
BCFC 01-04-02	Extraordinary Occurrence Procedure
BCFC 01-05-01	Procedures Office: Duties and Responsibilities
BCFC 01-08-01	Public Information and Inmate Access to News Media
BCFC 01-09-01	Staff Participation in Professional Organization and Conferences; Provision for Leave and Reimbursement for Expenses
BCFC 01-11-01	Institutional Duty Officer's Responsibilities
BCFC 02-01-02	Fiscal Management: Accounting Procedures
BCFC 02-01-03	Fiscal Management: Agency Funds (Amended 11/15/89)
BCFC 02-01-04	Fiscal Management: Insurance (Amended 11/15/89)
BCFC 02-01-05	Fiscal Management: Budget (Amended 11/15/89)
BCFC 02-01-06	Fiscal Management: Audit
BCFC 02-02-01	Inmate Accounts (Amended 11/15/89)
BCFC 02-02-02	Inmate Control of Personal Funds (Amended 11/15/89)
BCFC 02-02-03	Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
BCFC 02-03-01	Purchase Orders (Amended 11/15/89)
BCFC 02-04-01	Processing of Invoices
BCFC 02-05-01	BCFC Materials Receiving Procedure
BCFC 02-06-01	Property Inventory
BCFC 04-01-01	Employee Training and Development
BCFC 05-01-01	Information System
BCFC 06-01-01	Offender Records
BCFC 06-02-01	Storage of Expunged Records
BCFC 06-03-01	Court Trips
BCFC 06-03-02	Receipt of Order of Appearance
BCFC 08-02-01	Fire Prevention (Amended 11/15/89)
BCFC 08-03-01	Fire Procedures (Amended 11/15/89)
BCFC 08-03-02	Fire Extinguishers and Their Use
BCFC 08-09-01	Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances
BCFC 08-09-02	OHSA Hazard Communication Program [(Added 7/14/88)]
BCFC 09-06-01	Search Policy/Disposition of Contraband
BCFC 09-14-01	Bell County Forestry Camp - Restricted Area (Amended 11/15/89)
BCFC 10-01-01	Special Management Inmates (Amended 11/15/89)
BCFC 11-01-01	Food Services: General Guidelines (Amended 11/15/89)
BCFC 11-02-01	Food Service: Security
BCFC 11-03-01	Dining Room Guidelines (Amended 11/15/89)
BCFC 11-04-01	Food Service: Meals
BCFC 11-04-02	Food Service: Menu, Nutrition and Special Diets
BCFC 11-05-02	Health Requirements of Food Handlers
BCFC 11-06-01	Food Service: Inspection and Sanitation
BCFC 11-07-01	Food Service: Purchasing, Storage and Farm Products
BCFC 11-08-01	Staff/Visitor Meals
BCFC 12-01-01	Sanitation, Living Conditions Standards, and Clothing Issues (Amended 11/15/89)
BCFC 12-01-02	Bed Areas, Assignments/Conditions Standards (Amended 11/15/89)
BCFC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry
BCFC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule
BCFC 12-03-02	Barbership Services and Equipment Control (Amended 11/15/89)
BCFC 12-04-01	Institutional Inspections
BCFC 12-05-01	Fire Safety and Use of Noncombustible Receptacles
BCFC 12-06-01	Pest Control
BCFC 13-01-01	Organization of Health Services
BCFC 13-02-01	Health Maintenance Services: Sick Call and Pill Call
BCFC 13-03-01	Dental Policy/Sick Call
BCFC 13-04-01	Inmate Medical Screenings and Health Evaluations
BCFC 13-05-01	Licensure and Training Standards
BCFC 13-06-01	Suicide Prevention and Intervention Program
BCFC 13-06-02	First Aid/CPR Training Program

BCFC 13-06-03	Emergency Medical/Dental Care Services
BCFC 13-07-01	Health Records
BCFC 13-08-01	Special Diets
BCFC 13-09-01	Notification of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death
BCFC 13-10-01	Health Education/Special Health Programs
BCFC 13-11-01	Informed Consent
BCFC 13-12-01	Mental Health/Provision of Psychiatric Services by KCPC
BCFC 13-12-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC)
BCFC 13-13-01	Identification of Special Needs Inmates
BCFC 13-14-01	Use of Pharmaceutical Products
BCFC 13-15-01	Medical Restraints
BCFC 13-16-01	Specialized Health Services
BCFC 13-17-01	Vision Care/Optometry Services
BCFC 14-01-01	Inmate Rights and Responsibilities
BCFC 14-02-01	Legal Services Program (Amended 11/15/89)
BCFC 14-03-01	Inmate Grievance Procedure (Amended 11/15/89)
BCFC 14-04-01	Inmate Participation in Authorized Research
BCFC 15-01-01	Due Process/Disciplinary Procedures (Amended 11/15/89)
BCFC 16-01-01	Inmate Visiting
BCFC 16-02-01	Telephone Communications
BCFC 16-03-01	Mail Regulations (Amended 11/15/89)
BCFC 16-03-02	Inmate Packages
BCFC 17-01-01	Assessment/Orientation Procedure
BCFC 17-02-01	Inmate Reception Process
BCFC 17-03-01	Inmate Personal Property and Property Control (Amended 11/15/89)
BCFC 17-04-01	Unauthorized Items (Amended 11/15/89)
BCFC 17-05-01	Inmate Canteen (Amended 11/15/89)
BCFC 18-01-01	Institutional Classification Committee (Amended 11/15/89)
BCFC 18-02-01	Classification Document (Amended 11/15/89)
BCFC 18-03-01	Classification Process (Amended 11/15/89)
BCFC 18-03-02	Classification Program Planning (Amended 11/15/89)
BCFC 18-03-03	Population Category Status
BCFC 18-04-01	Instructions for Six Month Review (Amended 11/15/89)
BCFC 18-05-01	Transfers to Other Minimum Security Institutions (Amended 11/15/89)
BCFC 19-01-01	Job and Vocational Program Assignments (Amended 11/15/89)
BCFC 19-02-01	Government Service Details
BCFC 20-01-01	Academic/Vocational School
BCFC 20-01-02	Testing and Verification Procedure
BCFC 20-02-01	Educational Program Planning
BCFC 20-03-01	Academic and Vocational Curriculum
BCFC 20-04-01	Educational Personnel Practices
BCFC 21-01-01	Library Services (Amended 11/15/89)
BCFC 22-01-01	Recreation and Inmate Activities
BCFC 22-02-01	Inmate Clubs and Organizations
BCFC 22-02-02	Conducting Inmate Organizational Meetings and Programs
BCFC 22-03-01	Privilege Trips
BCFC 23-01-01	Religious Service
BCFC 23-02-01	Visitors for Religious Programs
BCFC 23-03-01	Marriage of Inmates
BCFC 24-01-01	Social Services and Counseling Program
BCFC 24-01-02	Casework Services
BCFC 25-01-01	Release Preparation Program Description
BCFC 25-02-01	Temporary Release/Community Center Release
BCFC 25-02-02	Furloughs
BCFC 25-03-01	Preparole Progress Report
BCFC 25-03-02	Parole Eligibility Dates
BCFC 25-04-01	Inmate Discharge Procedure
BCFC 26-01-01	Citizen Involvement and Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 22, 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: 34 employees of the Bell County Forestry Camp and 200 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Proposed Amendment)

601 KAR 1:005. Safety regulations.

RELATES TO: KRS Chapters 138, 281, Title 49, Code of Federal Regulations, Part 390-397
STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.726, 281.730, 281.750, Title 49, Code of Federal Regulations, Part 390-397
NECESSITY AND FUNCTION: This regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using the vehicle to transport agricultural products from his farm or to transport farm machinery or farm supplies to his farm. The transportation of hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025, Transporting hazardous materials, permit, is not included in this definition.

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Load limit" means the rated seating capacity for which a passenger-carrying vehicle is licensed plus twenty-five (25) percent of the rated seating capacity.

Section 2. (1) All commercial motor vehicles operated for-hire or in private carriage, interstate or intrastate, except those listed in subsection (2) of this section shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:

(a) Title 49, Code of Federal Regulations Part 390, General, excluding Part 390.5, effective April 24, 1989 is adopted without change;

(b) Title 49, Code of Federal Regulations, Part 391, Qualifications of Drivers, effective April 24, 1989, is incorporated by reference with changes;

(c) Title 49, Code of Federal Regulations, Part 392, Driving of Motor Vehicles, effective November 15, 1988, is incorporated by reference with changes;

(d) Title 49 Code of Federal Regulations, Part 393, Parts and Accessories Necessary for Safe Operation, with a latest effective date of March 7, 1989 (includes Part 393.1 which was amended by the U.S. Department of Transportation on March 24, 1989 with an effective date of November 15, 1988) is adopted without change;

(e) Title 49, Code of Federal Regulations, Part 394, Notification, Recording and Reporting of Accidents, effective November 15, 1988 is adopted without change;

(f) Title 49, Code of Federal Regulations, Part 395, Hours of Service of Drivers, effective November 15, 1988 is adopted without change;

(g) Title 49, Code of Federal Regulations, Part 396, Inspection, Repair and Maintenance, effective November 15, 1988 is adopted without change; and

(h) Title 49, Code of Federal Regulations, Part 397, Transportation of Hazardous Materials; Driving and Parking Rules, effective November 15, 1988 is adopted without change.

(2) The following exemptions and exceptions to compliance with the provisions of subsection (1) of this section are adopted:

(a) City buses, suburban buses, taxicabs, motorcycles and motor vehicles primarily designed for carrying passengers and having provisions for not more than eight (8) passengers and the driver are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation.

(b) Vehicles owned by the federal government, a state government, a county government, a city government, or a board of education and vehicles operating in interstate commerce which are specifically excluded by Title 49, Code of Federal Regulations, Part 390 are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation.

(c) Motor vehicles which are used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(d) Motor vehicles which are used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles from the harvest area when operated during daylight hours are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(e) Except for transporters of hazardous materials under 601 KAR 1:025, motor vehicle operators who are operating a vehicle on an intrastate commerce basis are not required to be twenty-one (21) years of age as set forth in 49 CFR 391.11(b)(1). However, they shall be at least eighteen (18) years of age and have either a valid chauffeur's license or commercial drivers license as required by state law.

Section 3. Title 49, Code of Federal Regulations, Part 390.5, Definitions, effective November 15, 1988, except that the definitions of "alcohol concentration," "conviction," and "driving a commercial motor vehicle while under the influence of alcohol" are excluded, is incorporated by reference for the purposes of application to 49 Code of Federal Regulations Parts 391-397.

Section 4. A summary of the content of each federal regulation governing motor carrier safety follows:

(1) Part 390 - applicable definitions and general policy.

(2) Part 391 - qualification and disqualification criteria for drivers; background and character of drivers; required examination and tests of drivers; required physical qualification and medical examinations

of drivers; driver qualification recordkeeping; and limited driver exemptions.

(3) Part 392 - vehicle operation standards including the use of alcohol and drugs by the driver; the safe operation of the vehicle; the use of lighted lamps and reflectors on the vehicle; the duties of the driver in case of an accident; fueling precautions; and prohibited practices.

(4) Part 393 - parts and accessories necessary for the safe operation of a motor vehicle including lighting devices, brakes, window construction, fuel systems, coupling devices, emergency equipment, miscellaneous parts and accessories; and protection against shifting or falling cargo.

(5) Part 394 - establishes the duties of motor carriers to make reports and keep records of accidents which occur during their operations.

(6) Part 395 - outline of the allowed hours of service of drivers.

(7) Part 396 - specifics of the inspection of a motor vehicle by the driver and federally authorized personnel and the records required to be maintained on vehicle maintenance and inspection.

(8) Part 397 - standards for the transportation of hazardous materials including driving, placarding and parking procedures.

Section 5. Buses. Buses shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired. Seats shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare. Employees in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays. All operators shall take into consideration the health and welfare of their passengers and control their operations in the public interest. Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in such position as to block exits or doorways on the bus.

Section 6. Overcrowding of Passenger Vehicles. No bus operated by an authorized carrier, except city or suburban buses, shall transport passengers in excess of its load limit. No passenger shall be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear door-well.

Section 7. Out of Service Sticker. If a commercial vehicle is determined to be operating either improperly registered or without registration or in violation of any safety regulation or requirement, officers of the Division of Motor Vehicle Enforcement are authorized to affix to the vehicle a notice indicating the nature of the violation, requiring its correction before the motor vehicle is further operated. Refusal of the vehicle operator to grant permission for an officer of the Division of Motor Vehicle Enforcement to conduct a safety inspection of either the vehicle or its operator shall be cause for the officer to place the vehicle out of service until such permission is granted. Operation of a vehicle in violation of the out of service notice affixed to it shall constitute a separate violation of these regulations.

Section 8. Copies of all incorporated material may be viewed in the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Vehicle Enforcement, State Office Building, Frankfort, Kentucky 40622.

JEROME LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: November 3, 1989
FILED WITH LRC: November 6, 1989 at 3 p.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on December 21, 1989 at 1:30 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by December 16, 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 December 16, 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: 30,000 motor carriers operating in Kentucky - however, the amendment only addresses those commercial drivers who are less than 21 years old.

(a) Direct and indirect costs or savings to those affected: The amendment allows nonhazardous materials intrastate commerce drivers to operate a commercial motor vehicle between the ages of 18 and 21. Federal regulations mandate that interstate commercial drivers be 21. When Kentucky adopts the federally required commercial driver license to be effective by April, 1992, this exemption will become mute because all commercial drivers will have to be 21.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected to allow those people already driving commercial vehicles who are under 21 additional time prior to compliance with the federal requirements. It was limited to intrastate commerce because we have no control over interstate commerce.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Divisions of Motor Carriers and Motor Vehicle Licensing
(Proposed Amendment)

601 KAR 9:045. Proportional registration of rental vehicle fleets.

RELATES TO: KRS Chapter 186
STATUTORY AUTHORITY: KRS 186.020, 186.050
NECESSITY AND FUNCTION: This regulation sets out procedures to follow in registering rental vehicle[s] fleets in the Commonwealth that qualify for proportional registration by virtue of engaging in interstate commerce, or in a combination of interstate and intrastate commerce, and operating into, through or within the Commonwealth.

Section 1. (1) Proportional registration of fleets of rental vehicles. An owner or operator of a fleet or fleets of vehicles which are used exclusively for rental purposes for a period of less than thirty (30) days, may elect to proportionally register its fleet in the Commonwealth of Kentucky [this state]. The owner or operator who makes this election shall file an application with the Department of Vehicle Regulation on or before sixty (60) days prior to the registration period.
(2) The application shall be upon forms furnished by the department except, that for good cause, the commissioner may approve the use of and receive an application on a form furnished by the fleet owner. The approval for the substitute form shall [must] be secured at least thirty (30) days prior to it use. Also, the request for the use of such forms shall [must] be in writing, setting forth circumstances to show why the standard forms would pose [work] a hardship.
(3) The proportional registrant[, hereunder,] shall maintain complete records, which [records] shall be subject to inspection by an authorized agent of the Department of Vehicle Regulation. The mileage and financial records [requested hereunder,] and all other records supporting the sworn application and not filed with the application, shall be maintained for a period not less than three (3) years.

Section 2. Commercial Vehicles (Trucks and Truck Tractors). (1) The application for registration of rental trucks and truck tractors shall be supported by a listing of all units in the rental fleet. These [; such] units shall be arranged in ascending sequential order by the identifying fleet unit number and reflect the following data for each unit: year, make, manufacturer's vehicle identification number, and declared gross weight. The applicant shall compute the number of units in each weight class in the fleet that shall be registered in the Commonwealth of Kentucky [this state] by dividing the total miles traveled in Kentucky by all units in each weight class for the year ending on the preceding August 31, by the total miles traveled in all jurisdictions by the same units for the same period of time; the resulting quotient, rounded to the the nearest ten thousandths, shall be multiplied by the total number of units in each weight class; provided, however, any fractional part shall be rounded and reported as one (1) unit. The weight classes shall be in accordance with the schedule of weight classes set forth in KRS 186.050(3).
(2) The department shall have thirty (30) days in which to examine, approve, or reject and return the [such] application. During the period commencing March 1 and ending at midnight on April 1, the owner shall apply for registration pursuant to the provisions of KRS 186.020 for the number of units reflected on the approved application [present approved application and certificates of registration together with appropriate fees to either the department in the instance of nonresident owner, or a county court clerk in the instance of a resident owner].

Section 3. Passenger Cars. (1) The application for registration of a fleet of rental passenger cars shall show:
(a) Total number of units in the rental fleet;
(b) Total amount of revenue arising from rental transaction from the total fleet for the previous year ending August 31;
(c) Total amount of revenue arising from rental transaction in this jurisdiction for the previous year ending August 31; and
(d) The [resulting] percentage of revenue arising in this jurisdiction to total revenue shall be multiplied by [applied to] the number of vehicles in such fleet. The result establishes the number of units which shall be licensed in Kentucky and shall be included on the application.
(2) The department shall have thirty (30) days in which to examine, approve, or reject and return such application.
(3) During the period commencing on the first day of the owner's birth month and ending at the close of business on the last day of the owner's birth month, the owner shall apply for registration pursuant to the provisions of KRS 186.020 for the number of units reflected on the approved application [January 1 and ending at midnight on February 28, the owner shall present approved application and certificates of registration together with appropriate fees to either the department in the instance of nonresident owners, or a county court clerk in the instance of a resident owner].

Section 4. Registration of Additional Fleet Vehicles. Vehicles acquired by the registrant after the commencement of the registration year

and added to the proportionally registered fleet shall be registered by applying the same percentage used in the original application for such fleet, for such registration period, the regular registration fees due with respect to such vehicles for the remainder of the registration year.

Section 5. An owner of a fleet of rental vehicles as defined in the Articles of the International Registration Plan shall be deemed to have complied with the provisions of this administrative regulation if the owner has registered the fleet of vehicles under the applicable portion of the Articles of the International Registration Plan. This compliance shall be determined and stated in writing by the commissioner of the Department of Vehicle Regulation or his designee. The designee shall be appointed in writing. [(1) If a vehicle registered under the provisions of KRS 186.050(14) is removed from use in the fleet, the owner of the plate may turn it in to the department along with his certificate of apportioned registration and be given credit for the unexpired portion of the year. This credit may be applied toward the purchase of any new tags which the owner may obtain from the department during the current registration year. A fee of two (2) dollars must be paid for the issuance.]

[(2) If a plate and certificate of apportioned registration are turned in to the department, the owner may, at the end of the registration quarter, make application for a refund of the fees which apply to the unexpired quarters of the registration year.]

[Section 6. (1) If the owner of a vehicle registered pursuant to KRS 186.050(14) loses his copy of a certificate of apportioned registration he may obtain a duplicate from the Department of Vehicle Regulation by filing an affidavit upon a form furnished by the department and he shall pay to the department a fee of two (2) dollars.]

[(2) If the owner loses a registration plate issued him under the provisions of KRS 186.050(14) he shall surrender his certificate of apportioned registration to the department and file therewith a written statement as to the loss of the plate. Upon the payment of the sum of two (2) dollars to the department the owner shall be issued another certificate of apportioned registration and a plate which shall bear a different number from that of the lost plate. The original copy of the surrendered certificate of apportioned registration shall be maintained by the department. The department shall forthwith cancel the registration corresponding to the number of the lost plate, and the cancellation shall be reported by the department to the Commander of the Department of State Police. Any person finding a lost registration plate shall deliver it to the Department of Vehicle Regulation or to any county court clerk for forwarding to the department.]

JEROME L. LENTZ, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: October 13, 1989
FILED WITH LRC: October 16, 1989 at 11 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on December 21, 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 December 16, 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 submitted to the cabinet in advance of the hearing. The cost of any transcript produced will be the responsibility of the agency or person requesting the transcript. If you do not wish to attend the public hearing, you may submit 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 operators of a fleet of rental vehicles who register vehicles in more than one licensing jurisdiction.
(a) Direct and indirect costs or savings to those affected: None. The regulation was amended to remove references to the International Registration Plan. A separate regulation, 601 KAR 9:135 has been adopted to deal solely with that issue. The only substitutive change was to require the owner to renew registration of the fleet during his birth month rather than February. This change is consistent with the registration of most other vehicles in the Commonwealth.
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. The regulation was amended to remove references to the International Registration Plan. A separate regulation, 601 KAR 9:135 has been adopted to deal solely with that issue. The only substitutive change was to require the owner to renew registration of the fleet during his birth month rather than February. This change is consistent with the registration of most other vehicles in the Commonwealth.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None since 601 KAR 9:135 has already been adopted. This amendment eliminates a duplication and conflict.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(Proposed Amendment)

601 KAR 35:060. Extended weight coal haul decals.

RELATES TO: KRS Chapter 177.9771

STATUTORY AUTHORITY: KRS Chapter 177.9771

NECESSITY AND FUNCTION: KRS Chapter 177.9771 permits a decal to be purchased for a coal truck to allow the vehicle to operate in excess of the legal maximum weight limit on roads and road segments designated as part of the extended weight coal haul road system. This administrative regulation sets forth the procedures to be followed in applying for and placement of this decal.

Section 1. The issuing agency for the decal authorized by KRS 177.9771 shall [will] be [issued by] the Department of Vehicle Regulation, Division of Motor Vehicle Licensing. Application shall be made on forms prescribed and furnished by the department. This application shall contain at least the following information:

(1) The name and address of the vehicle owner;

(2) Name of registrant if other than the owner (applies to International Registration Plan registrants only);

(3) Vehicle identification number of the vehicle;

(4) Axle arrangement of the vehicle; [and]

(5) Signature of the applicant; and

(6) Current registration license plate number of the vehicle, current registration receipt or other proof of current registration.

Section 2. The department shall not issue a decal for use on a vehicle which does not have a current registration for 80,000 pounds. An out-of-state applicant for a decal for a vehicle which has been registered under the International Registration Plan shall provide the department with proof that the vehicle for which the decal is being purchased has a current registration with a declared gross weight of at least 80,000 pounds.

Section 3. A decal shall not be issued for use on any vehicle which is not registered in Kentucky or which has not been registered through another jurisdiction under the International Registration Plan.

Section 4. [2.] Applications may be submitted by mail or in person but payment shall be received by the department prior to the issuance of the decal. Payment shall be made by certified check, cashiers check, or money order if applying by mail. Checks shall be made payable to the Kentucky State Treasurer. Cash will be accepted for the payment if the applicant appears in person.

Section 5. [3.] A decal shall be valid from the date of purchase until April 30 [March 31] of the year for which the decal is issued. The decals which are effective until March 31, 1990 shall be valid through April 30, 1990. The department shall not charge a fee for this one (1) month extension.

Section 6. [4.] Proration of the decal fee shall be according to the following schedule:

PURCHASE MONTH	TANDEM AXLE 90,000 LBS.	TRIDEM AXLE 100,000 LBS.
May [April]	$160.00	$260.00
June [May]	146.67	238.33
July [June]	133.33	216.67
August [July]	120.00	195.00
September [August]	106.67	173.33
October [September]	93.33	151.67
November [October]	80.00	130.00
December [November]	66.67	108.33
January [December]	53.33	86.67
February [January]	40.00	65.00
March [February]	26.67	43.33
April [March]	13.33	21.67

PURCHASE MONTH	TRACTOR-SEMITRAILER FIVE OR MORE AXLES 120,000 LBS.	INCREMENTAL WEIGHT
May [April]	$360.00	$10.00
June [May]	330.00	9.17
July [June]	300.00	8.33
August [July]	270.00	7.50
September [August]	240.00	6.67
October [September]	210.00	5.83
November [October]	180.00	5.00
December [November]	150.00	4.17
January [December]	120.00	3.33
February [January]	90.00	2.50
March [February]	60.00	1.67
April [March]	30.00	.83

Section 7. [5.] The decal shall be placed on the door of the driver's side of the vehicle. The decal shall be permanently affixed on the left side of the door immediately below the window glass using the decal adhesive.

Section 8. [6.] A decal issued for a particular axle configuration shall be placed only on a vehicle having that axle configuration.

Section 9. [7.] If [In the event that] the motor vehicle for which a decal has been issued by the Department of Vehicle Regulation becomes destroyed, stolen, or disabled within thirty (30) days subsequent to the application for the [such] decal, the [such] unused decal may be returned to the department and the application therefore withdrawn.

Section 10. [8.] The decal shall remain with the vehicle, even upon transfer of ownership of the vehicle.

JEROME LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary

APPROVED BY AGENCY: November 1, 1989

FILED WITH LRC: November 3, 1989 at 1 p.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on December 21, 1989 at 11 a.m., local prevailing time in the Fourth Floor Hearing Room of the

State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by December 16, 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 December 16, 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: 3,500 coal trucks and their operators who operate at extended weights.
(a) Direct and indirect costs or savings to those affected: One additional month of currency on this year's extended weight coal haul road decals.
1. First year: Savings of 83¢ to $30/truck.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Proof of current vehicle registration as required by KRS 197.771 is to be presented at the time of application for a decal. The Transportation Cabinet will accept the license plate number and check AVIS if that is all the applicant has available.
(2) Effects on the promulgating administrative body: Can deny decals to those trucks not properly registered.
(a) Direct and indirect costs or savings:
1. First year: Loss of 83¢ to $30/truck.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Will have to check registration.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because there are trucks with decals with no current registration or registered at a weight below 80,000 pounds required by state law.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The 1989-90 decal expiration date was extended for one month so that a new registration year will be in effect for a month before the new decals are needed. That way we won't cause undue problems for the truck operators.
TIERING: Was tiering applied? Yes.

TRANSPORTATION CABINET
Department of Highways
Division of Traffic
(Proposed Amendment)

603 KAR 5:077. Motor vehicles [Trucks] prohibited on Louisville Hill, Frankfort.

RELATES TO: KRS 189.231
STATUTORY AUTHORITY: KRS 189.231
NECESSITY AND FUNCTION: KRS 189.231 authorizes the Secretary of Transportation to restrict or regulate traffic on state-maintained highways in a [such] manner as is reasonably necessary to promote the safety and convenience of the traveling public. The purpose of this regulation is to promote the public safety by restricting and regulating the use of a portion of a state-maintained highway by certain types of motor vehicles and by motor vehicles [trucks and by trucks] hauling hazardous materials.

Section 1. Definitions. [As used in this regulation, the hereinafter set forth terms shall have the following meaning:]
(1) "Flammable material" means liquid or gaseous petroleum products.
(2) "Hazardous material" means a substance or material defined as or meeting the criteria of a hazardous material by KRS Chapter 174 or 601 KAR 1:025 [and regulations issued pursuant thereto].
(3) "Motor vehicle combination" means a motor vehicle of any type or size operated in combination with any trailer or towed load.

Section 2. Prohibited Vehicles. The following vehicles shall be prohibited from operating eastbound on US 60 between Leawood Drive and KY 1211 (Taylor Avenue) within the city of Frankfort:
(1) Any motor vehicle with more than two (2) axles;
(2) Any motor vehicle having a licensed gross weight or total gross weight in excess of 18,000 pounds;
(3) Any motor vehicle combination;
(4) Any motor vehicle transporting flammable or hazardous material; and
(5) Any motor vehicle upon which wrecker cranes or other equipment suitable for wrecker service have been mounted while that motor vehicle has a vehicle in tow. [All trucks having more than two (2) axles and also all trucks transporting flammable material or hazardous material are prohibited from operating on the eastbound lane or lanes of that portion of Highway US 60 in the City of Frankfort between Tanglewood Drive and the junction of Highway KY 1211 (Taylor Avenue).]

Section 3. Exceptions. Exceptions to the prohibition set forth in Section 2 of this regulation shall be the following:
(1) Emergency vehicles responding to emergencies;
(2) Utility company vehicles responding to emergencies; and
(3) Highway maintenance or construction equipment operating in response to emergency road conditions or performing maintenance.

construction, or reconstruction operations on Lafayette Drive or the section of US 60 normally prohibited to those vehicles.

O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: October 17, 1989
FILED WITH LRC: October 18, 1989 at 9 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on December 21, 1989 at 10 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by December 16, 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 submitted to the cabinet in advance of the hearing. The cost of any transcript produced will be the responsibility of the agency or person requesting the transcript. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until December 16, 1989. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 1003 State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All vehicles with more than two axles or which weigh more than 18,000 pounds or which are transporting hazardous materials and are using US 60 eastbound in Frankfort, Kentucky.
(a) Direct and indirect costs or savings to those affected: Each vehicle affected is required to make a detour of up to 3.2 miles.
1. First year: Each trip will have an average estimated increased cost of $1.60 for the larger vehicles.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The original ban on trucks using Louisville Hill was insufficient as evidenced by the major accident in August, 1989. A consensus between the Transportation Cabinet, the city of Frankfort and the Frankfort Independent School System was reached which determined the vehicles which are prohibited from operating down Louisville Hill.
(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: Second Street School sits at the bottom of Louisville Hill. There is great concern about the students' safety if the expanded ban is not in place.
TIERING: Was tiering applied? Yes.

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 is [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.

(1) 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.

ROBERT E. RUBERG, Vice Chairman

APPROVED BY AGENCY: November 15, 1989

FILED WITH LRC: November 15, 1989 at noon

PUBLIC HEARING: A public hearing has been scheduled on Thursday, December 28, 1989 at 10 a.m. (EST) 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 November 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 December 23, 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 3:135. Bidding procedures.

RELATES TO: KRS 45A.350, 156.070, 156.076, 424.260
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 45A.350 authorizes, inter alia, school districts to elect to procure pursuant to KRS 45A.345 through 45A.460 or under KRS 424.260 [the old method of procurement]; KRS 156.070 gives the State Board of Education the management and control of the public schools and gives it authority to prescribe such rules and regulations as it deems necessary for the efficient management, control, and operation of the schools under its jurisdiction; KRS 156.076 allows a board of education, under certain conditions, to advertise for bids and award contracts for supplies and equipment covered by price contracts secured by the Department of Finance at the request of the State Board; and KRS 424.260 requires a school district to make newspaper advertisements for bids for purchases of certain materials, supplies, equipment, or contractual services exceeding $7,500 [5,000]. This regulation standardizes the bidding procedures to be utilized by boards of education where such are necessary.

Section 1. For those school districts electing not to adopt KRS 45A.345 to 45A.460 the following requirements shall apply: Notices for bidding advertised by boards of education for purchases of materials, supplies, equipment, or contractual services, where advertising for bids is required or allowed by statute, shall describe what is to be bid for and the time and place for receiving and opening of bids.

Section 2. All bids shall be submitted in writing, typewritten or in ink, and sealed, and they shall be opened and read publicly at a legal meeting of the board of education or its authorized agent.

Section 3. No bids shall be changed after they are once submitted. This in no way prevents the acceptance or rejection of alternates which are specified as a part of the regular bid forms and specifications. However, the full intent of this section is to prohibit negotiation of contracts subsequent to time bids are submitted.

Section 4. In the event the lowest bid is not accepted, the board shall record in the minutes the reason for the rejection.

Section 5. All bids submitted and information pertaining thereto shall be filed and made available for review by interested parties.

Section 6. Notification of the awarding of the contract shall be given in writing to all bidders. This notice shall include a list of all bidders together with their bids.

Section 7. Any bid which is accepted in noncompliance with any of the above sections shall be considered null and void.

ROBERT E. RUBERG, Vice Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at noon
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ron Moubray
(1) Type and number of entities affected: Most public school districts in Kentucky.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The proposed amendment will bring the existing regulation (702 KAR 3:135) into compliance with KRS 424.260.
TIERING: Was tiering applied? No. Statutory bidding requirements mandate uniformity in bidding procedures.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(Proposed Amendment)

702 KAR 6:010. Local responsibilities.

RELATES TO: KRS 156.010, 156.031, 156.035, 42 U.S.C. §1751 to §1769b, 42 U.S.C. §1771 to §1789 [156.100]
STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070[, 156.160]
NECESSITY AND FUNCTION: This regulation is promulgated under the authority of the State Board for Elementary and Secondary Education's mandate to implement federal education assistance programs and is needed to carry out the Congressional intent of the National School Lunch Act of 1946, the Child Nutrition Act of 1966 and all amendments thereto. Also, it holds a [the] local agency accountable for its [their] program.

Section 1. The operation of all school food service programs in the public, private, parochial and state schools shall be the responsibility of the local board of education or the governing body of the schools.

Section 2. Rules and regulations shall be developed by local governing bodies regarding the employment, dismissal, promotion, work assignments, emergency leave, sick leave, vacation leave, retirement, insurance, workmen's compensation and salary schedules providing at least minimum wage in accordance with minimum wage laws[, purchasing food, equipment, cost of meals, storage and sanitation; and financial accounting and safeguarding of funds].

Section 3. Rules and regulations shall be developed by local governing bodies regarding purchasing food and equipment, cost of meals, storage and sanitation, and financial accounting and safeguarding of funds. These rules shall be in compliance with applicable local, state or federal laws, and regulations.

ROBERT E. RUBERG, Vice Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at noon
PUBLIC HEARING: A public hearing has been scheduled on Thursday, December 28, 1989 at 10 a.m. (EST) 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 November 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 December 23, 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: Paul McElwain
(1) Type and number of entities affected: 177 public school districts
(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: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Regulation is to be applied equally to all districts participating in federal child nutrition programs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR 210.13; 7 CFR 210.15; 7 CFR 3015 Subpart S
2. State compliance standards. KRS Chapter 45A; KRS 424.260; KRS 219.011
3. Minimum or uniform standards contained in the federal mandate. Standards involving facilities; cash management; purchasing.
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.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(Proposed Amendment)

702 KAR 6:030. Principal's responsibilities.

RELATES TO: KRS 156.010, 156.031, 156.035, 42 U.S.C. §1751 to §1769b, 42 U.S.C. § 1771 to §1789 [156.100, 160.380, 161.140]
STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070[, 156.160]
NECESSITY AND FUNCTION: This regulation is promulgated under the authority of the State Board for Elementary and Secondary Education's mandate to implement federal education assistance programs and and is needed to carry out the Congressional intent of the National School Lunch Act of 1946, the Child Nutrition Act of 1966 and all amendments thereto. It defines the role of the local school principal to the school food service program(s) within his jurisdiction.

[Section 1. The local school principal in concert with the food service director, if available, shall examine the school's philosophy of education as well as the local board of education's general policies for the school district and define the role that the school food service program(s) shall assume in the total educational process within his jurisdiction.]

Section 1. [2.] School districts not employing a school food service director shall require the local school principal, within his jurisdiction, to be responsible for the school food service programs(s) in the following areas:
(1) School food service personnel;
(2) School food service records and reports;
(3) School food service menu planning;
(4) Adequate scheduling of school food service programs;
(5) Food purchasing;
(6) Food storage;
(7) Free and reduced price lunch and breakfast applications;
(8) Food preparation;
(9) Food service facilities and equipment;
(10) Food serving;
(11) Food service sanitation;
(12) Accountability of school food service funds; and
(13) Innovated ideas to improve school food service participation.

ROBERT E. RUBERG, Vice Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at noon
PUBLIC HEARING: A public hearing has been scheduled on Thursday, December 28, 1989 at 10 a.m. (EST) 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 November 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 December 23, 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: Paul McElwain
(1) Type and number of entities affected: 177 public school districts.
(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: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Regulation is to be applied equally to all districts participating in federal child nutrition programs.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(Proposed Amendment)

702 KAR 6:040. Personnel; policies and procedures.

RELATES TO: KRS 156.010, 156.031, 156.035, 42 U.S.C. §1751 to §1769b, 42 U.S.C. § 1771 to §1789 [156.100, 160.380, 161.152]
STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070[, 156.160]
NECESSITY AND FUNCTION: This regulation is promulgated under the authority of the State Board for Elementary and Secondary Education's mandate to implement federal education assistance programs and is needed to carry out the Congressional intent of the National School Lunch Act of 1946, the Child Nutrition Act of 1966 and all amendments thereto. This regulation describes the policies and procedures to be followed by a school district in employing local school food service personnel.

Section 1. Each school district shall employ school food service personnel in a procedure consistent with KRS 160.380 and 702 KAR 6:045.

Section 2. Each school district shall notify in writing each full-time school lunch employee of [;] the hours, terms and conditions of employment, lines of authority, and general responsibilities and shall include a service termination policy for both the district and employee.

Section 3. Each school district shall establish and adopt a uniform pay scale for all full-time school food service employees.

Section 4. Each school district shall provide workmen's compensation and fulfill minimum hourly wage rates for school food service personnel.

Section 5. The superintendent shall cause school food service personnel to avail themselves of training programs when such are offered.

Section 6. Social security participation for school food service personnel shall be in keeping with social security policies for other nonprofessional personnel.

ROBERT E. RUBERG, Vice Chairman
APPROVED BY AGENCY: November 15, 1989

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul McElwain
(1) Type and number of entities affected: 177 public school districts.
(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: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Regulation is to be applied equally to all districts participating in federal child nutrition programs.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(Proposed Amendment)

702 KAR 6:070. Funds and reports.

RELATES TO: KRS 156.010, 156.031, 156.035, [156.100,] 156.200, 7 CFR 210.11, 42 U.S.C. §1751 to §1769b, 42 U.S.C. §1771 to §1789 [156.480, 424.260]
STATUTORY AUTHORITY: KRS 156.031, 156.035,156.070[, 156.160]
NECESSITY AND FUNCTION: This regulation is promulgated under the authority of the State Board for Elementary and Secondary Education's mandate to implement federal education assistance programs and is needed to carry out the Congressional intent of the National School Lunch Act of 1946, the Child Nutrition Act of 1966 and all amendments thereto. This regulation is necessary to properly protect all funds accruing to the School Food Service Program.

Section 1. A local board of education shall be responsible for the safeguarding of all funds accruing to the school food service program by adopting a definite plan for handling of the funds, and bonding all personnel who receive [and/]or handle such funds.

Section 2. All funds received as payment for meals by pupils, adults and[/or] federal and state reimbursements shall be used only for food, labor and expendable items needed for the school food service program operation.

Section 3. School food service funds[, as prohibited by Section 210.7(b) of the national school lunch regulations,] shall not be used to:
(1) Purchase land; or
(2) Acquire or construct buildings.[;]
[(3) Make alteration to existing building;]
[(4) Finance out-of-state travel;]
[(5) Finance intrastate travel for nonschool food service program(s);]
[(6) Pay and/or reimburse the USDA for donated foods which have been misused or spoiled;]
[(7) Pay rent for space used for school food service programs;]
[(8) Be used in lieu of general funds for personnel and programs other than the school food service programs(s).]

Section 4. All schools approved for participation in the national school food service program(s) shall make required monthly reports (using approved forms) to the State Department of Education. A copy of the forms submitted to the State Department of Education, as well as other financial records and reports, pertaining to the school food program and applications for free and reduced price meals shall be kept by the school [and/]or local board of education for a period of three (3) fiscal years after the close of the fiscal year applicable to such records and are subject to an audit by appropriate state and federal official(s).

Section 5. All school personnel regularly assigned to positions in the school shall have access to meals served to students by [in] the school food service program(s) [and the cost of the meal shall be ten (10) cents or more above the cost assigned to paying pupils]. The cost of adult meals shall, at a minimum, be equal to:
(1) The price charged to students paying the school's designated full price; plus
(2) The current amount of Section 4 reimbursement; plus
(3) The current value of commodity assistance.

Section 6. All school meals receiving federal reimbursement shall be priced as a complete unit.

Section 7. A school food service program shall be operated on a nonprofit basis where actual cash balances shall not exceed three (3) [a two (2)] months operating balance.

Section 8. The sale of miscellaneous food items by a school during the regular school day

shall be in compliance with 7 CFR 210.11 [Section 210.15(b) of the national school lunch regulations].

Section 9. All food, supplies and equipment purchased by a local school district in the operation of a school food service program shall be in accordance with applicable state purchase and bid laws [KRS 424.260].

ROBERT E. RUBERG, Vice Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at noon
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul McElwain
(1) Type and number of entities affected: 177 public school districts.
(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: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: Could be increased local revenues due to appropriately priced adult meals-impossible to estimate amount.
(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. Regulation is to be applied equally to all districts participating in federal child nutrition programs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR 210.11, 7 CFR 210.14, FNS Instruction 782-5 Rev.1
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. Rules on competitive foods; pricing of adult meals; cash balances.
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.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(Proposed Amendment)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: KRS 156.070 gives the State Board for Elementary and Secondary Education the management and control of the common schools, including interscholastic athletics therein, and allows the state board to designate an agency to manage athletics pursuant to rules approved by the state board. This regulation designates such an agent for high school athletics and adopts the constitution, bylaws, procedures and rules of that agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) is hereby designated as the State Board for Elementary and Secondary Education's agent to manage interscholastic athletics at the high school level in the common schools, including any private schools desiring to associate with KHSAA and to compete with the common schools.

Section 2. The constitution, bylaws, tournament rules, due process procedures, and officials' rules of the KHSAA Handbook, 1989-90 [1988-89], are hereby approved, adopted, and incorporated herein by reference. This material may be inspected and copied at the Office of Legal Services [Instruction] Department of Education, First [17th] Floor, Capital Plaza Tower, Frankfort, 8 a.m. - 4:30 p.m., Monday - Friday.

ROBERT E. RUBERG, Vice Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at noon
PUBLIC HEARING: A public hearing has been scheduled on Thursday, December 28, 1989 at 10 a.m. (EST) 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 November 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 December 23, 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: Gary Bale
(1) Type and number of entities affected: Approximately 240 member high schools.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: No effect
(4) Assessment of alternative methods; reasons why alternatives were rejected: No additional requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Uniform rules and regulations apply to all high schools competing in interscholastic athletics in interests of fairness and consistency of treatment and results of athletic competition.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(Proposed Amendment)

702 KAR 7:070. Interscholastic athletic eligibility and requirements; redshirting prohibited.

RELATES TO: KRS 156.070
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: KRS 156.070 gives the State Board for Elementary and Secondary [of] Education the management and control of interscholastic athletics in the common schools, and the authority to designate an organization or agency to manage such athletics. This regulation is needed to establish with the public common schools a uniform system of eligibility to participate in interscholastic athletics and to designate an organization to manage interscholastic athletics in the secondary schools.

Section 1. Eligibility to Participate in Elementary School Athletics. (1) No pupil in the public common schools repeating the sixth grade during the 1985-86 school year, or enrolled in grades seven (7) through eight (8) during said year or thereafter and not subject to subsection (2) of this section, shall be eligible to participate in interscholastic athletics the second, or any subsequent, year the pupil is enrolled in the same grade, and no public common school shall participate in an athletic contest with another school that does not adhere to this policy, except, in the case of a public school, one which has granted a waiver pursuant to subsection (3)(a) of this section and, in the case of a private school, one which has granted a waiver in a similar fashion.

(2) Any pupil enrolling in the sixth grade of a public common school, and not repeating said grade, during the 1985-86 school year, and any subsequent sixth grade enrollee, shall have three (3) school years from the time of initial sixth grade enrollment to complete his or her eligibility in elementary school interscholastic athletics. No public common school shall participate in an athletic contest with another school that does not adhere to this policy, except, in the case of a public school, one which has granted a waiver pursuant to subsection (3)(a) of this section and, in the case of a private school, one which has granted a waiver in a similar fashion.

(3)(a) Any pupil who is retained in the sixth, seventh, or eighth grade for documented and legitimate academic deficiencies, in compliance with the local school district's adopted grading and retention policy adhering to state accreditation standards, may apply to his or her local board of education for a waiver of ineligibility under subsection (1) or (2) of this section. The granting of any such waiver shall be permissive with the local board of education, and the burden of proof that retention was based upon bona fide academic deficiencies, and not upon any desire for athletic advantage, shall rest with the pupil.

(b) The granting of any such waiver of ineligibility for elementary school athletics shall not affect the need to obtain a similar waiver for high school athletics under Section 2(3) of this regulation.

(4) Middle school pupils (grades 5-8) shall not participate on more than one (1) school sponsored team at the same time in the same sport (including elementary and high school teams).

Section 2. Eligibility to Participate in Secondary School Athletics. (1) The eligibility of students to participate in interscholastic athletics at the secondary level shall be governed by the current Constitution, bylaws and tournament rules of the Kentucky High School Athletic Association (KHSAA).

(2)(a) Effective with the 1985-86 school year, pupils enrolling in the sixth grade of any school shall have seven (7) school years from the time of such enrollment to complete their eligibility in high school interscholastic athletics subject to the jurisdiction of KHSAA.

(b) No pupil enrolled in the seventh or eighth grade in 1985-86, or thereafter, and not subject to paragraph (a) of this subsection, shall be eligible for more than a total of one (1) year in each grade.

(c) No student who initially enrolled in the ninth grade during or prior to the 1985-86 school year or who is not otherwise subject to paragraph (a) of this subsection, and who has been enrolled in grades 9-12 eight (8) semesters, shall thereafter be eligible.

(d) Middle school pupils (grades 5-8) shall

not participate in high school (grades 9-12) contact sports - i.e., football, wrestling, soccer, or baseball - and middle school pupils shall not participate on more than one (1) school sponsored team at the same time in the same sport (including elementary and high school teams).

(e) [(d)] The KHSAA shall adopt the provisions of this subsection as a part of its bylaws and shall fully implement and enforce said eligibility requirements for all high school athletics subject to its jurisdiction.

(3)(a) Any pupil who is retained in the sixth, seventh, or eighth grade for documented academic deficiencies, in compliance with the local school district's adopted grading and retention policy, may appeal any year of ineligibility under subsection (2)(a) of this section, pursuant to (KHSAA) due process procedures, incorporated by reference in 702 KAR 7:065. The burden of proof that retention was based upon bona fide academic deficiencies, and not upon any desire for athletic advantage, shall rest with the pupil. In no event shall any waiver be available to allow a pupil eligibility once he has been enrolled in grades 9-12 for eight (8) semesters.

(b) Any such appeal may be pursued either immediately after the pupil's retention or immediately prior to the year of ineligibility.

Section 3. Any public elementary or secondary school or school employee or official who knowingly allows participation of an ineligible player hereunder, or who, through reasonable diligence, should have known of such ineligibility, or who abuses or misuses the waiver provisions of Section 1(3) of this regulation, shall be considered in noncompliance with state accreditation standards or guilty of willful neglect of duty or breach of contract, and such shall be remediated in any appropriate manner, in addition to any appropriate disciplinary or punitive action being taken against the involved individuals. Such shall apply not only to coaches but also to personnel supervising coaches; such as but not limited to an athletic director, an assistant principal, a principal, an assistant superintendent, a superintendent, or a school board member.

ROBERT E. RUBERG, Vice Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at noon
PUBLIC HEARING: A public hearing has been scheduled on Thursday, December 28, 1989 at 10 a.m. (EST) 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 November 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 December 23, 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: Gary Bale
(1) Type and number of entities affected: All state public elementary and secondary schools and their students; private member schools of KHSAA; and KHSAA.
(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: Some (but unknown number). Additional eligibility appeals, on limited grounds, to local boards and KHSAA.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Minimal costs of additional appeals from KHSAA to state board.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Additional appeals and written decisions thereon to state board.
(3) Assessment of anticipated effect on state and local revenues: Very minimal.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Needed some avenue of regulatory relief from flat 7 years of eligibility; need to protect middle school students from potentially harmful high school sports and from sports participation too many nights a week.
(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. Some tiering to allow for legitimate relief from 7-year eligibility rule; with remainder of rules, uniform application necessary.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:005. Educational Improvement Act.

RELATES TO: KRS 158.650 to 158.750 [740]
STATUTORY AUTHORITY: KRS 156.070, 158.650, 158.670, 158.700
NECESSITY AND FUNCTION: KRS 158.650 to 158.750 [740, as amended by Senate Bill 202], the Educational Improvement Act, mandate a program of assessment, testing, annual performance reports, educational improvement plans and various sanctions to insure the right of public school students to acquire the competencies in the basic [essential] skills necessary to complete high school, pursue postsecondary education, or enter the work force; and to assure such students access to programs and services appropriate to their educational needs in the areas of competencies in the basic [essential] skills, with the Department of Education to administer the act pursuant to regulations of the State Board for Elementary and Secondary [of] Education and to develop a

comprehensive implementation plan. This regulation implements the duties and functions [of the Educational Improvement Act of 1978, as amended by Senate Bill 202,] by adopting the Department of Education's revised implementation plan.

Section 1. Each local district board of education shall prepare an Annual Performance Report which shall include local district data for the following factors: annual transportation cost per pupil transported; annual current expenses per pupil in average daily attendance; cost per pupil for instruction; cost per pupil for administration; percent of district revenue received from local, state and federal sources; local revenue per child in average daily attendance; assessed property value per child in average daily attendance; results of the state-mandated testing program; results of Scholastic Aptitude Test and American College Board Test; dropout rate; retention rate; percent average daily attendance; number and percent of students going to college or other postsecondary training; number and percent of students enrolled in special education and completing Individual Education Plans; percent of enrollment classified as economically deprived; percent attendance by professional staff; student/teacher ratio; teacher/administrator ratio; salary data by rank; the number of teachers teaching out of their field of specialty and the number of classes taught by teachers out of their field of specialty; expenditures for staff in-service; courses exceeding the state Program of Studies requirements; and an executive summary of the Master Educational Improvement Plan Progress Report. This report shall be submitted to the State Board <u>for Elementary and Secondary</u> [of] Education by [December 15, 1984 for the 1983-84 school year, and by] September 15 of each [succeeding] school year and shall be published in the newspaper with the largest circulation in the county by October 1.

Section 2. Each local district board of education shall <u>annually</u> identify program and service deficiencies and student achievement deficiencies based upon the Annual Performance Report, the results of the most current review of the factors listed hereinafter and such other state-mandated performance reports as deemed appropriate. Deficiencies shall be determined as follows:

(1) The local school district shall be deemed to have a deficiency in program and service offerings when one (1) or more of the following accreditation standards are not met <u>unless approval has been lawfully granted by the State Board for Elementary and Secondary Education</u>.

(a) STANDARD - legal responsibility:

1. Indicator - the local school district is in compliance with current applicable statutes of the Commonwealth of Kentucky and Kentucky administrative regulations and state board policies.

2. Indicator - the local school district is in compliance with current applicable federal laws and regulations.

(b) STANDARD - curriculum and learning environment.

1. Indicator - each school provides a minimum of 175 days of instruction.

2. Indicator - each school provides a minimum of six (6) hours of instructional time per day.

3. Indicator - each school is in compliance with the requirements in the Program of Studies in Kentucky Schools, K-12, pursuant to 704 KAR 3:304.

4. Indicator - each school has a written plan for implementing the program of instruction for grades K-12.

5. Indicator - opportunities are provided for citizens' groups to participate in the following:

a. Curriculum study;

b. Budget planning;

c. Cooperative evaluation; and

d. Accreditation study.

6. Indicator - the school has developed specific plans and procedures assuring accountability to the local board and to the public.

7. Indicator - quality textbooks with current content and provided in adequate quantities to meet classroom needs.

8. Indicator - the school has sufficient materials and equipment available to implement the curriculum.

(c) STANDARD - school staff and administration.

1. Indicator - all professional personnel hold appropriate certificates for positions and/or assignments. (Each vocational staff member has the required work experience specific to the program being taught.)

2. Indicator - all teachers are teaching in their major or minor field or specific areas of concentration.

3. Indicator - the local district has established and implemented procedures for evaluating all certified personnel based on the quality of their performance.

(d) STANDARD - responsible pupil conduct. Indicator - pupils, parents, teachers, administrators, and school board members are involved in the development of a code of pupil conduct and attendance based on assessed needs which is approved by the local school board; which is in compliance with state and federal law; and which contains a system by which all pupils, parents, and faculty members are informed annually of the pupil code and its provisions.

(e) STANDARD - financial support and budget. Indicator - the budget provides for adequate funding of all required accrediting standards.

(2) The local district shall be deemed to have a deficiency in program and service offerings when one (1) or more of the following planning and reporting standards are not met;

(a) STANDARD - master educational improvement plan. Indicator - the local school district shall prepare, with the involvement of local citizens, parents, students, teachers, and administrators, and implement the master educational improvement plan established jointly by the district and the Kentucky Department of Education and approved by the local board of education.

(b) STANDARD - annual performance report.

1. Indicator - the local district shall prepare and submit each year as herein required, the annual performance report to the State Board <u>for Elementary and Secondary</u> [of] Education.

2. Indicator - the local district shall publish the annual performance report in the newspaper with the largest circulation in the county by October 1.

(3) The local school district shall be deemed to have a deficiency in academic achievement

when [one (1) or more of] the following standard of attainment is [of competencies are] not met: STANDARD - student academic performance.

[(a)] Indicator: [-]

(a) Local school districts shall be deemed to have a satisfactory level of performance if students in grades 3, 5, 7 and 10 score at or above the national average of fifty (50) normal curve equivalency in each of the five (5) skill areas of reading, mathematics, language, spelling and reference skills. Districts scoring below the national average of fifty (50) NCE in the defined grades and skill areas but equal to the predicted score minus one and one-half (1 1/2) standard deviations of the residual scores shall not be deemed to be deficient. [Students in grades 3, 5, 7, and 10 shall score at or above the national average of fifty (50) normal curve equivalency on the total battery of the Kentucky Essential Skills Test.]

(b) The predicted level of performance shall be calculated through the application of a statistical linear regression procedure that considers the effects of the percent of students who are classified as economically deprived.

(c) Local districts achieving an academic performance level less than fifty (50) normal curve equivalency and more than one and one-half (1 1/2) standard deviations of the residual scores below the predicted level of performance in two (2) or more grades of 3, 5, 7 and 10 in any skill area shall be deemed to have an academic deficiency in that skill area and shall include in the master educational improvement plan a specific goal focused on remediating the identified deficiency.

[(b) Indicator - local school districts shall achieve an academic performance level at which eighty-five (85) percent of the students enrolled in each grade shall master the essential skills in the skills areas of reading and mathematics in the 1984-85 school year and in the additional skills areas of spelling, writing and library research reference skills each year thereafter. Districts achieving a performance level at which the percent of students in each grade mastering the essential skills is more than five (5) percentage points below eighty-five (85) percent shall develop and implement plans at the local level to improve the performance level by two and five-tenths (2.5) percentage points each year. Local school districts achieving an academic performance level at which the percent of students in any grade mastering the essential skills is more than five (5) percentage points below eighty-five (85) percent in three (3) or more grade levels in any one (1) skills area, or that fail to demonstrate in two (2) consecutive years the previously required rate of improvement in a grade or skills area shall be deemed to have a deficiency in the applicable skills area and shall include in the Master Educational Improvement Plan a specific goal focused on improving the percent of students mastering the essential skills by at least two and five-tenths (2.5) percentage points each year. The goal shall include both process and product objectives which establish specific action, time frames, and outcomes that systematically move the district toward achieving an eighty-five (85) percent performance level in each grade and skills area.]

(4) The local school district shall be deemed to have a deficiency in product goals when one (1) or more of the following school district outcome standards are not met:

(a) STANDARD - student attendance.

1. Indicator - the percentage of attendance shall be calculated by dividing the aggregate days attendance by the aggregate days membership. Local school districts achieving a percent of attendance of more than ninety-three and five-tenths (93.5) but less than ninety-six (96) shall be deemed in a satisfactory range and shall develop and implement a plan at the local level which includes a specific goal focused on improving student attendance. The goal shall include both process and product objectives which establish specific action, time frames, and outcomes that systematically move the district toward achieving ninety-six (96) percent or better student attendance.

2. Local school districts achieving less than ninety-three and five-tenths (93.5) percent attendance and more than one and one-half (1 1/2) standard deviations of the residual scores below the predicted level of performance shall be deemed to have a deficiency and shall include in the Master Educational Improvement Plan a specific goal focused on improving student attendance. The goal shall include both process and product objectives which establish specific actions, time frames, and outcome that systematically move the district toward achieving ninety-six (96) percent or better student attendance. In addition local school districts achieving less than ninety-three and five-tenths (93.5) percent attendance and more than one and one-half (1 1/2) standard deviations of the residual scores below the predicted level of performance shall as a minimum achieve the following percentage improvements in attendance each year by range groupings in which they fall for that year:

Below ninety (90) percent - the difference between ninety (90) percent and the district's current percent of attendance;

Over ninety (90) percent but less than ninety-two (92) percent - two (2) percent;

Over ninety-two (92) percent but less than ninety-three and five-tenths percent - one (1) percent.

Any local school district failing to implement the Master Educational Improvement Plan shall be deemed deficient in accordance with subsection (2) of this section.

(b) STANDARD - student dropout. Indicator: [-]

1. The dropout rate shall be defined as the annual percentages of students leaving school prior to graduation in grades 7-12 and include withdrawals in attendance accounting codes W6, W10, [and] W11, and W14.

2. Local school districts with a dropout percentage of more than three and five-tenths (3.5) percent but less than five and five tenths (5.5) percent shall be deemed in a satisfactory range and shall develop and implement a plan at the local level which includes a specific goal focused on reducing the dropout rate. The goal shall include both process and product objectives which establish specific actions, time frames, and outcomes that systematically move the district toward reducing the dropout percentage to three and five-tenths (3.5) percent or less.

3. Local districts with a dropout percentage greater than five and five-tenths (5.5) percent and more than one and one-half (1 1/2) standard deviations of the residual score above the

predicted level of performance shall be deemed to have a deficiency and shall include in the Master Educational Improvement Plan a specific goal focused on reducing the dropout rate. The goal shall include both process and product objectives which establish specific actions, time frames, and outcomes that systematically move the district toward reducing the dropout percentage to three and five-tenths (3.5) percent or less. In addition, local districts with a dropout percent in excess of five and five-tenths (5.5) percent and more than one and one-half (1 1/2) standard deviations of the residual score above the predicted level of performance shall as a minimum achieve the following percentage improvements in reducing dropouts each year by the range groupings in which they fall for that year:

Over eight and five-tenths (8.5) percent - the difference between eight and five-tenths (8.5) percent and the district's current dropout percentage;

Less than eight and five-tenths (8.5) percent but more than seven (7) percent - one (1) percent;

Less than seven (7) percent but more than five and five-tenths (5.5) percent - .75 percent.

4. A local school district failing to implement the Master Educational Improvement Plan shall be deemed deficient in accordance with Section 2(2) of this regulation.

Section 3. [(1)] To correct deficiencies as defined by this regulation and meet other statutory requirements, each local board of education shall prepare and submit to the State Board for Elementary and Secondary [of] Education for approval, by October 15 of relevant years [, 1985], a Master Educational Improvement Plan in accordance with KRS 158.710. The Master Educational Improvement Plan shall include as separate components the following: Part I, a plan for addressing accreditation deficiencies; Part II, a plan for addressing deficiencies in academic performance on state mandated tests; Part III, a plan for addressing the district personnel in-service needs (to be submitted by July 15 annually); Part IV, a plan for addressing the deficiencies identified as a result of the district's financial analysis; and Part V, such other components as necessary to correct deficiencies identified in other program and performance areas. The Master Educational Improvement Plan shall include specific time lines for correcting each deficiency and shall designate the individuals responsible for correcting each deficiency. The Master Educational Improvement Plan shall be established jointly by the district and the Kentucky Department of Education and shall be approved by the local board of education and the State Board for Elementary and Secondary [of] Education.

[(2) Upon the initial filing and approval of a Master Educational Improvement Plan, the contents thereof shall supersede the separate component reports then on file.]

Section 4. (1) Each district shall submit a written report signed by the superintendent and local board members to the Kentucky Department of Education by September 15 of each school year, its progress in correcting the deficiencies addressed in its Master Educational Improvement Plan. The Kentucky Department of Education shall identify those districts failing to make satisfactory progress in correcting deficiencies in the school year succeeding the year in which the deficiency was identified. The progress reports of the identified districts and such other reports as may be requested shall be reviewed annually by the Educational Improvement Advisory Committee which shall recommend to the Superintendent of Public Instruction for State Board action, those districts which are "educationally deficient" and which should be provided with technical assistance by the Kentucky Department of Education. Satisfactory progress shall be defined relative to "educationally deficient," as the district's compliance with and adherence to the time lines established in the approved Master Educational Improvement Plan which shall be submitted on an annual basis until the district is cleared of deficiencies.

(2) Where time lines established in a Master Educational Improvement Plan require remedial action by a district prior to the submission of a following year's progress report, the Superintendent of Public Instruction shall monitor such compliance and may recommend declarations of educational deficiency to the State Board for Elementary and Secondary [of] Education, where compliance is not accomplished, without recommendation or consideration by the Educational Improvement Advisory Committee.

Section 5. Local school districts, declared educationally deficient, which fail to meet or make satisfactory progress toward correcting deficiencies in program and service standards and product standards, for the second consecutive year succeeding the year in which the deficiency was initially identified and after having received one (1) year of mandatory technical assistance from the Kentucky Department of Education, during the second year after the deficiency was identified, shall be subject to direct management intervention by the State Board for Elementary and Secondary [of] Education, as defined by KRS 158.685(4). Satisfactory progress shall be defined as the district's compliance with and adherence to the time lines established in the approved Master Educational Improvement Plan.

Section 6. Subsequent to direct management intervention by the State Board for Elementary and Secondary [of] Education, if the local district still does not meet established time lines for correcting deficiencies, removal from office of a member or members of the local board or the superintendent or other school district personnel, pursuant to KRS 156.132 to 156.136, may be pursued by the state board.

Section 7. The following steps shall be taken prior to state board action relating to Section 4, 5 or 6 of this regulation:

(1) The Superintendent of Public Instruction shall notify in writing the superintendent of the district being considered for state board action based on educational deficiencies, such notification to come thirty (30) calendar days prior to consideration by the Educational Improvement Advisory Committee and the State Board for Elementary and Secondary Education.

(2) The local superintendent and local board or their designee shall be provided an opportunity to meet with the Superintendent of

Public Instruction or his designee in the Kentucky Department of Education within ten (10) calendar days of the original notification to review the current status of the district.

(3) The Superintendent of Public Instruction shall notify the local district of the final recommendation at least fifteen (15) calendar days prior to the presentation of the recommendation to the Educational Improvement Advisory Committee and the State Board for Elementary and Secondary Education.

(4) The local district shall be provided an opportunity to appear and be heard before the Educational Improvement Advisory Committee at the time the recommendation relating to local district deficiency is considered. The local district shall be provided an opportunity to appear and be heard before the State Board for Elementary and Secondary Education after having appeared before the Educational Advisory Committee.

Section 8. [7.] A district that has been declared an educationally deficient district by the state board shall be notified of such declaration in writing. At such time as an educationally deficient district shall be cleared by the Kentucky Department of Education of all deficiencies contributing to the declaration of educational deficiency, the Superintendent of Public Instruction, with the approval of the State Board for Elementary and Secondary [of] Education, shall notify such a district in writing.

ROBERT E. RUBERG, Vice Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at noon
PUBLIC HEARING: A public hearing has been scheduled on Thursday, December 28, 1989 at 10 a.m. (EST) 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 November 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 December 23, 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: Dr. H. M. Snodgrass
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: 177 local school districts.
1. First year:
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No change.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No change.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No change from current form of registration.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not applied because of the need for uniformity.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:325. Effective Instructional Leadership Act.

RELATES TO: KRS 156.101
STATUTORY AUTHORITY: KRS 156.070, 156.101
NECESSITY AND FUNCTION: KRS 156.101 requires the State Board for Elementary and Secondary [of] Education to establish specific criteria for implementing a statewide instructional leader improvement program for employees of the public schools holding valid certificates and performing [the] responsibilities as principals, assistant principals, supervisors of instruction, guidance counselors or directors of special education. This regulation establishes and sets criteria for such a program.

Section 1. Definitions. (1) Instructional leader - a certified employee who is performing the responsibilities as principal, supervisor of instruction, guidance counselor, or director of special education.

(2) Training provider - an established educational organization or private educational consultant who sponsors training programs.

(3) Presenter - person who conducts the training program. The presenter can also be a training provider.

(4) Training program - a workshop or series of workshops focused on a specific goal with established objectives, activities, and procedures for evaluation.

Section 2. [1.] By July 13, 1986, and every two (2) years thereafter, each instructional leader employed by the public schools of the Commonwealth shall participate in an intensive and continuing training program of no less than forty-two (42) participant hours of instruction approved by the State Department of Education. Completion of the required participant hours shall be reported to the local school district and to the State Department of Education. Failure to participate shall result in a one (1) year probation. Those certified as instructional leaders on or after July 14, 1984, who fail to complete the training during the probationary period, shall have their administrative certificates revoked.

Section 3. [2.] (1) Participation in the program is required for all those certified and

employed at least one-half (1/2) time as instructional leaders. Under the provisions of Accreditation Standards (Standard V, Compliance Indicator 5) and amendments to 704 KAR 3:035 (annual in-service education plan) local school districts are required to develop a plan for instructional leadership training as part of their Master In-service Education Plan. Districts which do not ensure that their instructional leaders obtain the required participant hours shall be cited for an accreditation deficiency.

(2) The approval of specific training for instructional leaders, as well as the selection of approved providers of such training shall [may] be determined by the superintendent or designee of the local district.

(3) Every two (2) years each local school district must send a verification form to the Kentucky Department of Education, recording the names of all instructional leaders, their position titles, their social security numbers, the dates they entered the two (2) year cycle, and the number of hours of training obtained during the two (2) year cycle.

(4) All participant verification forms and certificates must be kept on file for six (6) years by each local district for each participant. In the event that a participant changes districts, his/her original file should be sent to him/her and a duplicate copy to the new district.

Section 4. [3.] (1) Instructional leaders shall participate in a training program designed to improve and maintain the quality and effectiveness of instructional leadership in the public schools of the Commonwealth. The State Board of Education may approve agencies or institutions, defined hereinafter as providers, to design, implement, and evaluate such training. Training programs approved by the State Board for Elementary and Secondary [of] Education shall be:

(a) Intensive and designed specifically for instructional leaders. Participation should occur during the contract period including extended employment, if applicable. Training should be scheduled so as to minimize disruption of the instructional program of the district.

(b) Competency-based, specifying instructional leadership competencies to be mastered by participants. Competencies may have general applicability for instructional leaders or may be role-specific. Based on identified needs, the department may allow credit for required specific training.

(c) Comprehensive in nature and shall meet identified needs. Needs shall be identified as described in the program content, Section 4 of this regulation. To meet the criterion of comprehensiveness, a program must contain the pertinent interrelated aspects of a broad competency area. This requirement shall not preclude approved subcontracting by providers for program components.

(d) Characterized by follow-up activities to document the application of acquired competencies. To the optimum extent possible, these activities should occur on the employment site.

(e) Evaluated in terms of program content, instructional processes, and impact upon participants. Specifically, participant application of competencies shall be verified by random sampling utilizing local school district provider, and participant data. [Evaluation of the training shall include, but not be limited to, participant pre- and posttesting of the specific instructional leadership competencies.]

(2)(a) During the initial two (2) year cycle of instructional leadership training in a job category, the instructional leader may count six (6) hours of credit toward the required forty-two (42) hours for attendance at conferences of established professional education organizations. After an instructional leader has completed the initial two (2) year cycle in a job category, he or she may count up to twelve (12) hours of credit per training cycle for attendance at education conferences. An instructional leader may acquire a maximum of six (6) hours of credit for each conference attended. Such conferences shall be congruent with the instructional leader's annual growth plan and approved by the local superintendent or designee prior to attendance.

[(f) The conferences of established professional education organizations shall be approvable for up to six (6) hours of credit toward the forty-two (42) hours required of instructional leaders every two (2) years.] Such conferences shall [must] be submitted to the Kentucky Department of Education and the Kentucky State Board for Elementary and Secondary [of] Education [for approval prior to the date of the conference]. When approved by the Kentucky State Board for Elementary and Secondary [of] Education, instructional leaders shall [are to] be awarded certificates by their local district upon verification of attendance.

(b) Professional education organizations who sponsor conferences may apply for full hour-for-hour instructional leadership training credit by submitting a proposal to be reviewed by the Kentucky Department of Education and approved by the Kentucky State Board for Elementary and Secondary Education.

(3) [(2)] The two (2) year cycle to which a training program will be applied is determined by the date on which the last contact hour of a training program occurs. The two (2) year cycle is divided into halves for the purpose of prorating the forty-two (42) hour requirement of one who may become a participant after the beginning date of a two (2) year cycle. The halves and hour requirements are as follows:

(a) July 14 - July 13, first year of cycle - forty-two (42) hours by the end of the two (2) year cycle.

(b) July 14 - July 13, second year of cycle - twenty-one (21) hours by the end of the year.

(4) [(3)] At the end of the two (2) year cycle [On or before August 1, 1986,] a participant's verification of attendance at approved Effective Instructional Leadership Training sessions and programs and copies of program certificates must be recorded with his/her district.

(5) [(4)] Excess hours (not to exceed twenty-one (21)) earned by a participant during the forty-three (43) day period of June 1 through July 13 at the end of a two (2) year cycle may be carried forward to the next two (2) year cycle and credited toward required hours for that cycle.

Section 5. [4.] The training program content shall consist of specific competencies consistent with the following definition of instructional leadership: Instructional

leadership is the process of encouraging and modeling appropriate academic expectations of students and teachers in a positive school climate with affective, physical, and social needs to be considered as they relate to the cognitive development of students. The leadership competencies for the improvement of instruction for children and youth relate to an understanding of the teaching/learning process as well as to the supportive and evaluative functions of the instructional leader.

Section 6. [5.] Identification of needs will provide the basis for the definition of specific instructional leadership competencies to be addressed within the parameters of the above definition.

Section 7. [6.] The provider of the training program shall:

(1) Develop programs which meet the criteria identified above;

(2) Select program faculty who have adequate, pertinent training/education, appropriate experience, and the ability to instruct effectively;

(3) Meet identified needs consistent with the definition of instructional leadership cited in Section 4 of this regulation;

[(4) Determine eligible participants as identified by the superintendent of their LEA;]

(4) [(5)] Identify in all informational literature the two (2) year cycle for which approval is granted and the specific category(ies) of instructional leader for which training is approved;

(5) [(6)] Conduct training as set forth in its proposal and as approved by the Department of Education;

(6) [(7)] Award participants Kentucky Department of Education certificates of attendance and document, through an attendance roster for each training session, participation of instructional leaders to the local district superintendent and the Department of Education; and

(7) [(8)] Evaluate the training in terms of its content, instructional processes and impact upon the professional behavior of participants.

Section 8. [7.] The State Board for Elementary and Secondary [of] Education, upon recommendation of the Superintendent of Public Instruction, shall approve training programs and providers, and the Department of Education shall maintain and distribute a list of approved programs and providers.

Section 9. [8.] (1) Approval shall be granted for a period of up to two (2) consecutive years. Continuation of approval for another two (2) year period shall be granted upon receipt of a statement of request from the provider. The Superintendent of Public Instruction may revoke such approval if the provider does not implement the approved training program.

(2) In order to protect bona fide institutions and organizations and to protect citizens of the Commonwealth from fraudulent practices, unfair competition and substandard educational training programs, the Kentucky State Board for Elementary and Secondary Education shall require that a provider seeking program approval meet the following criteria:

1. An established organizational structure including a legally chartered or organized status or an interagency agreement;

2. Legally appropriate officers and/or a governing body, membership representative of the education profession, and a verifiable domicile; and

3. A record of effective sponsorship of in-service activities.

(3) Determination of approval as a provider will be based upon:

(a) Submission of a provider's training program proposal within sixty (60) days prior to the State Board of Education meeting at which approval is requested;

(b) Specific program criteria;

(c) Program content addressing specified competencies of instructional leadership and specific categories of instructional leaders identified in training proposals;

[(d) In order to protect bona fide institutions and organizations and to protect citizens of the Commonwealth from fraudulent practices, unfair competition and substandard educational training programs, the Kentucky State Board of Education shall require that a provider seeking program approval meet the following criteria:]

[1. An established organizational structure including a legally chartered or organized status or an interagency agreement;]

[2. Legally appropriate officers and/or a governing body, membership representative of the education profession, and a verifiable domicile; and]

[3. A record of effective sponsorship of in-service activities.]

(d) [(e)] Local districts and educational cooperatives may qualify as providers.

ROBERT E. RUBERG, Vice Chairman

APPROVED BY AGENCY: November 15, 1989

FILED WITH LRC: November 15, 1989 at noon

PUBLIC HEARING: A public hearing has been scheduled on Thursday, December 28, 1989 at 10 a.m. (EST) 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 November 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 December 23, 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: Rita Lindsey

(1) Type and number of entities affected: 177 school districts.

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

1. First year: No impact on costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Paperwork requirements will be the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No difference.

2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Paperwork requirements will remain the same.
(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendments are needed for clarification.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are 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. Statute requires 42 hours of training for everyone.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:335. State plan for the administration of Chapter 2, of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 [ECIA of 1981].

RELATES TO: KRS 156.031, 156.035
STATUTORY AUTHORITY: KRS 156.031, 156.070
NECESSITY AND FUNCTION: This regulation implements the State Board for Elementary and Secondary [of] Education's plan approval and federal statute implementation functions under KRS 156.031 and 156.035 relative to federal funds received under Chapter 2 of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 [Education Consolidation and Improvement Act of 1981].

Section 1. Pursuant to the authority vested in the [Kentucky] State Board for Elementary and Secondary [of] Education, the Kentucky State Plan for Chapter 2 of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, [Education Consolidation and Improvement Act of 1981,] shall be prepared and approved by the State Board for Elementary and Secondary [of] Education, in accordance with he appropriate federal guidelines, and submitted to the U.S. Secretary of Education for his approval. [This document is incorporated by reference and hereinafter shall be referred to as the "State Plan" for fiscal years ending September 30, 1988, as amended May, 1986. Copies of the State Plan may be obtained from the Division of Instructional Support, State Department of Education.]

Section 2. Formula and Criteria for Distribution of Chapter 2 Funds of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. The following criteria, to be funded by eighty (80) percent of the total state grant, have been developed by the State Educational Agency (SEA) in consultation with the Governor's Advisory Committee and shall be applied to meet the requirements of Section 1512(a)(1)(3) of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 regarding Chapter 2 funds:
(1) Ninety-one and three-tenths (91.3) percent of the funds distributed to local educational agencies will be based on the enrollment of pupils in public and participating private, nonprofit schools using data from the end of the first month school, as updated by the local educational agencies, for the school year prior to the one for which funds are being awarded.
(2) A total of eight and seven-tenths (8.7) percent of the funds will be distributed to the local educational agencies which have the greatest percentage of children whose education imposes a higher than average cost per child as determined by considering those from low income families five and five-tenths (5.5) percent as well as those with a high degree of sparsity (three and two-tenths (3.2) percent).
(3) The Governor's Advisory Committee having approved this formula also wishes to express grave concern over the financial cuts imposed on Chapter 2 at the national level. The cuts impose hardships on local educational agencies in a manner that will impact the quality of programs designed to enhance learning.

Section 3. Funds Reserved for State Use. Twenty (20) percent of the funds will be retained by the Kentucky Department of Education. Of the twenty (20) percent, twenty-five (25) percent will be used for administrative and twenty (20) percent will be used for effective school (Section 4 of this regulation) programs, with the remainder of the funds going to the programs referred to in Sections 5, 6, 7, 8, 9, and 10 of this regulation.

Section 4. Effective Schools. This project is designed to develop a uniform effective schools program that enhances school based programs, promotes a climate of quality education for all children in the Commonwealth, improves student performance, and promotes educational wellness for all citizens.
(1) Project activities shall be as follows:
(a) Develop a statewide "effective schools council;"
(b) Contract with a nationally recognized "effective schools" leader to assist the Kentucky Department of Education in developing a scope and sequence that department personnel will use in working with the local schools;
(c) Train teams of effective schools specialists to help local school districts develop individual school site-based management involving the principal, teachers, parents, and community;
(d) Conduct statewide regional conferences to promote the understanding of quality effective schools programs;
(e) Provide seed money for the development of the effective schools program at the local school building site.
(2) Each local school that chooses to participate shall identify program achievement standards as emphasized in the Ron Edmonds' effective schools research:
(a) Effective school leadership which creates

consensus on instructional goals and builds a capacity for instructional problem solving.

(b) An emphasis on the acquisition of basic and higher order thinking skills;

(c) A safe and orderly school environment that allows teachers and pupils to focus their energies on academic achievements;

(d) A climate of expectation that virtually all children can learn under appropriate conditions; and

(e) A continuous assessment of students and programs to evaluate the effects on instruction.

(3) The effective schools specialists teams using the training received from a nationally recognized "effective schools" leader shall work with the schools on a continuous basis using this model to increase the academic achievement levels of all children and particularly educationally deprived children.

(4) This shall be evaluated by improved test scores.

Section 5. At Risk and Higher Cost Student Programs. This project is designed to develop statewide programs that meet the educational needs of students at risk of failing and/or dropping out of school, and students for whom providing an education entails higher than average cost. The goal is to promote a climate of quality education for all at-risk students in the Commonwealth.

(1) The activities for this project shall be as follows:

(a) Develop a statewide "at risk school council";

(b) Contract with a nationally recognized educational leader to enlighten state department personnel, and to develop a scope and sequence that department personnel will use in working with the local schools;

(c) Develop and train a cadre of people to work with local school districts to utilize individual school site-based management involving the principal, teachers, parents, and community to achieve an ongoing at-risk student program;

(d) Conduct statewide regional conferences to increase level of knowledge of at-risk students and assist in the development of programs to serve them;

(e) Provide seed money for the development of the at-risk program at the local school building site.

(2) The reason for selecting this target is to improve the dropout rate of students in the Commonwealth.

(3) The evaluation shall be based on the diminishment of the dropout rate in the state.

Section 6. Personal Excellence and Achievement of Students. This target shall be for programs designed to enhance personal excellence of students. The goals for this project shall be to recognize individual students and groups that have attained academic or cultural excellence.

(1) The activities for this target shall be as follows:

(a) The Commonwealth Diploma, which is a supplementary higher level diploma for academically gifted students.

(b) Academic statewide competition to showcase student achievement.

(2) The reason for selecting this target is to call attention to student achievement in order to honor those students that have succeeded as well as to motivate students that are not working to their potential.

(3) The evaluation shall be based on the number of students affected by this target.

Section 7. Innovative Projects. This target shall be used to provide discretionary grants for innovative projects that will enhance the educational program and climate of the schools.

(1) The grants shall be based on the following factors:

(a) Low achieving school districts;

(b) Lack of local revenue to support supplementary innovative programs;

(c) Innovative projects that will serve as models to be disseminated statewide.

(2) This project shall utilize the National Diffusion Network as well as local district developed models for programs that are greatly needed to enhance the overall climate of the schools. The programs used by the local schools shall be evaluated for their effectiveness in promoting sound education programs and providing a positive climate for the total school family.

Section 8. Programs for Participating Private, Nonprofit Schools (Catholic Enrollment - 82.62 Percent of State Participating Private, Nonprofit Schools) - Personal Excellence and Achievement of Students.

(1) This program is designed to measure the effectiveness of the education program in parochial schools in promoting personal excellence and student achievement. Such measurements shall be achieved by using the following:

(a) A testing program that will permit the schools to correlate student achievement with curriculum, and make appropriate curriculum adjustments to enhance student achievement;

(b) After the test is administered, the results shall be studied and analyzed in order to correlate student ability and student achievement with appropriate learning activities.

(2) It is the parochial schools' belief that student achievement and personal excellence cannot be enhanced without an objective measurement test and a continual observation to correlate student ability with achievement.

Section 9. Innovative Projects (Catholic Schools). This target program, as provided for in Section 7 of this regulation, is designed to provide innovative activities to enhance the educational program using models such as listed in subsections (1), (2) and (3) of this section but not limited to these examples:

(1) Teacher training in a variety of new innovative models for higher order thinking skills of students. This will allow the students to apply creative skills to all areas of the curriculum.

(2) Purchase new innovative computer software to provide for computer assisted instruction. This activity will create new interest in the students and promote student achievement.

(3) Each activity will be evaluated as to the effect it has on promoting student achievement and personnel excellence.

Section 10. Programs for Participating Private, Nonprofit Schools (Other than Catholic - 17.38 Percent) - Training and Professional Development. This target will be used to provide equitable participation and funding for training

and professional development projects that will enhance the knowledge and skills of educational personnel including teachers, librarians, school counselors, other pupil services personnel, administrators, and school board members of the participating private, nonprofit schools other than Catholic.

(1) Project activities shall be subject to, but not limited to, the following:

(a) Statewide conference;

(b) Statewide regional conferences;

(c) Professional development grants with the control of funds remaining in the Kentucky Department of Education.

(2) These professional training activities are needed to improve the quality of instruction for the children attending those private, nonprofit schools. The activities will be monitored to assure only secular, neutral, and nonideological services are provided.

Section 11. How Funds are Distributed. Out of the Chapter 2 grant received by the SEA, at least eighty (80) percent must be distributed to local educational agencies (LEAs) on a formula basis. The SEA shall distribute these funds according to enrollments (membership of school year prior to that in which the payment is to be made) in public and participating private, nonprofit schools within each LEA area. Entitlements shall be adjusted to provide higher per pupil allocations to LEAs which have the greatest percentages of children whose education requires a higher than average cost. LEAs shall be informed by June of each year of the amount of funds which are to be received for public and participating private, nonprofit school students for programs beginning on July 1. LEAs will submit an application. This application shall describe the planned use of funds among targeted assistance programs.

Section 12. How Allocations are made to Local Educational Agencies. From the sum made available each year under Section 1502, the SEA shall distribute not less than eighty (80) percent to LEAs within the state. Grants to LEAs will be calculated on the relative enrollments in public and participating private, nonprofit schools, and in accordance with criteria approved by the secretary to provide higher per pupil allocations to local educational agencies which have the greatest percentages of high cost children. From the funds paid to it pursuant to Sections 1502 and 1511 during each fiscal year, the SEA shall distribute to each LEA which has submitted an application, as required in Section 1533, the amount of its allocation as determined under Subsection (a) of Section 1512.

Section 13. Complaint Procedures for LEAs. The chief administrator of an LEA may file with the Division of Support Services a written complaint pertaining to the allocation of Chapter 2 funds to that LEA. The written statement shall include a detailed statement of facts upon which the complaint is based.

Section 14. Complaint Procedures for Private, Nonprofit Schools. A person or private, nonprofit school may file with the Division of Support Services a written complaint alleging that children enrolled in private, nonprofit schools within a certain LEA are not receiving benefits on an equitable basis. The written complaint shall include a detailed statement of facts upon which the allegation is based.

Section 15. Supplement and Not Supplant Other Funds. LEAs and the State Department of Education shall use funds received under Chapter 2 only to supplement and increase the level of funds that would be made available from nonfederal sources. In no case may these funds be used to supplant or take the place of funds from nonfederal sources.

Section 16. Expenditure Report Form. Each year the Chapter 2 Expenditure Report Form shall be submitted to the Division of Support Services upon expending fifty (50) percent of the fiscal year funds and upon expending 100 percent of the fiscal year funds. Obligations made prior to September 30 shall be liquidated on or before September 30 of the subsequent project year. Unobligated funds shall be expended within the following year, ending September 30. Permission to expend these funds for a purpose which differs from that stated in originally approved application form must be obtained in writing from the State Department of Education.

Section 17. Annual Supplement to the Three (3) Year Application. Annually the state shall require LEAs to supply information concerning the number of students who are being served by Chapter 2 funds, how the funds are being used, and the types of services furnished. Moreover, at this time there will be an opportunity to change the program purposes for which Chapter 2 funds shall be used in the preceding year.

Section 18. Local Monitoring and Evaluation Requirements. (1) In the Chapter 2 application, an LEA shall assure that a number of requirements have been met. The LEA shall keep such documentation as may be necessary to verify the meeting of these requirements. Documentation shall be available to support an affirmative answer to each of the following questions:

(a) Have Chapter 2 funds been used for eligible program purposes?

(b) Are appropriate fiscal and programmatic records available for examination?

(c) Have parents, school personnel, and others been consulted systematically concerning the allocation of Chapter 2 funds for the various purposes and concerning the planning and implementation of programs under this Chapter?

(d) Have appropriate private, nonprofit school officials been consulted concerning the needs of private, nonprofit school children and the provision of services to meet those needs?

(2) The state department shall conduct monitoring visits in order to verify the information which has been submitted to the state. After a monitoring visit, the local educational agency shall receive a written report of the findings of the visit. Federal regulations provide that if the LEA disagrees with the findings, it may reply in writing to the State Education Department within sixty (60) days of receiving the report. The state department shall respond in writing to the LEA within sixty (60) days of receiving a reply from the LEA.

ROBERT E. RUBERG, Vice Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at noon

PUBLIC HEARING: A public hearing has been scheduled on Thursday, December 28, 1989 at 10 a.m. (EST) 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 November 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 December 23, 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: Diane Teasley
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: LEA may claim indirect cost per indirect cost formula approved by the Kentucky Department of Education.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: LEA must file 50% and final expenditure reports.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: SEA claims an indirect cost as negotiated with the federal government.
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: SEA will generate approximately $1,000,000 for administration over a three year period. The LEAs will generate approximately $17,128,800 over a three year period.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no allowable alternatives.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering not possible under federal law providing these funds.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Sec. 1501, 1502, 1511, 1512, 1521, 1522, 1531, 1532, 1533, 1541, 1542, 1571, 1572, 1573, 1574, 1575, 1576, and 34 CFR Parts 76, 77, and 298.
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. An SEA or LEA that receives Chapter 2 funds: (a) May use and allocate those funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of federal funds made available under Chapter 2, be made available from nonfederal sources; and (b) May not use Chapter 2 funds to supplant funds from nonfederal sources.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Chapter 2 funds must now be targeted toward the following: programs for at risk students; programs to acquire and use instructional materials to improve the quality of instruction; innovative programs for schoolwide improvements, including effective schools programs; programs of training and professional development; programs to enhance personal excellence of students and student achievement; and other innovative projects to enhance the educational program and climate of the school.

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Building Codes Enforcement
(Proposed Amendment)

815 KAR 7:080 Licensing of fire protection sprinkler contractors.

RELATES TO: KRS Chapter 198B
STATUTORY AUTHORITY: KRS 198B.555
NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required to adopt regulations for the administration of a Fire Protection Sprinkler Contractor's Law. This regulation establishes the qualifications, responsibilities, procedures and fees for licensing such contractors. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A and to more fully define the term "inspection".

Section 1. [3.] Definitions. (1) "Department" as defined by KRS 198B.550(1). [means the Department of Housing, Buildings and Construction.]
(2) "Certificate of competency" is the certificate of registration issued by the department to an individual [certificate holder] who has satisfied [passed] the requirements of the department as set forth in KRS 198B.550 through 198B.605 [Section 4 of this regulation] which authorizes a fire protection sprinkler contractor to obtain a license to engage in business pursuant to KRS 198B.550(3) [as defined in subsection (5) of this section].
(3) "Certificate holder" as defined by KRS 198B.550(5). [is an individual who has satisfactorily met and has received a certificate of competency and who serves as employee, owner, partner, or officer of a fire protection sprinkler contractor and prepares technical drawings, performs or supervises the installation, repair, alteration, addition, maintenance or inspection of a fire protection sprinkler system.]
(4) "Commissioner" as defined by KRS 198B.550(2). [means the Commissioner of the Department of Housing, Buildings and

Construction.]

(5) "Fire protection sprinkler contractor" as defined by KRS 198B.550(3). [means a person or firm engaged in the business of preparing technical drawings, installation, repair, alteration, exterior maintenance or inspection of fire protection sprinkler systems and has in his employment a certificate holder.]

(6) "Fire protection sprinkler system" as defined by KRS 198B.550(6). [is a system of piping for which technical drawings have been prepared by or preparation supervised by a certificate holder in accordance with fire protection engineering standards. The system is supplied from a reliable, constant and sufficient water, gas or chemical supply, such as a gravity tank, fire pump, reservoir or pressure tank, or connection by underground piping to a city, county, municipal water district, authorized water main or both. The sprinkler system is considered the fire protection sprinkler system for purposes of this Act, and is a network of specially sized or hydraulically designed piping installed overhead and underground in a building, structure, or area, and to which sprinklers are connected in systematic pattern. The system includes a controlling valve and a device for actuating an alarm when a system is in operation. The system is activated by heat from a fire and causes the discharge of water, gas or chemical over the fire area. Fire protection sprinkler systems shall include the following types: wet-pipe systems, dry-pipe system, standpipe systems, preaction systems, deluge systems, combined dry-pipe and preaction systems, antifreeze systems and circulating closed loop systems, systems utilizing gases or chemicals, and any other fire suppression system previously approved by the state fire marshal or the chief building code official of the department.]

(7) "Inspection" means a physical and visual examination of a sprinkler system or portion thereof to verify that it conforms with the Kentucky Building Code and the standards adopted thereunder. [Such] Examinations of existing systems, including the actual operation of valves, devices or appliances and returning them to their normal service condition for purposes of determining whether a system is operating properly are not covered by this definition, although any certificate holder is deemed qualified to make these examinations.

(8) "Installation" means the initial placement of a system or its extension or alteration after initial placement.

Section 2. [1.] Responsibilities of the Commissioner. The commissioner shall review applications, accept fees and issue certificates and licenses to qualified persons and firms pursuant to this regulation. He shall conduct investigations upon complaints which allege that a certificate holder or licensed fire protection sprinkler contractor has acted in violation of KRS Chapter 198B or this regulation.

Section 3. [2.] Applicability. (1) This regulation applies to all firms and persons who engage in he business of design and preparation of technical drawings, installation, repair, alteration, extension, maintenance or inspection of any fire protection sprinkler system.

(2) Exceptions. This regulation shall not apply to:

(a) Professional engineers in the preparation of plans or construction inspections pursuant to KRS Chapter 322;

(b) Building officials, fire marshals or fire inspectors and insurance inspectors;

(c) Persons installing limited area sprinkler systems served by a domestic water supply consisting of ten (10) sprinkler heads or less in one (1) structure;

(d) Persons working under the direct supervision of a certificate holder.

(e) Persons performing routine examination of existing suppression systems for purposes of determining if the system is operational.

Section 4. Application for Certificate of Competency. (1) All persons seeking to become certificate holders shall comply with the examination requirements set forth in KRS 198B.570 [demonstrate their competency by passing the National Institute for Certification in Engineering Technologies entitled Fire Protection Engineering Technology Automatic Sprinkler Design Level III test, (or the equivalent thereof approved by the commissioner] for the particular type of system for which the applicant wishes to be certified competent. For range hood suppression system competency, a manufacturer's certification shall be acceptable as an alternative to the foregoing test.

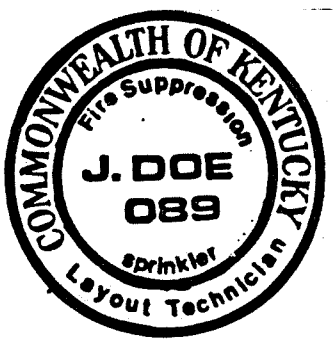
(2) Each application for a certificate of competency shall be made on the department's form entitled "Application for Certificate of Competency." The application shall be accompanied by all required documents and a nonrefundable certificate fee of $100, which shall be prorated.

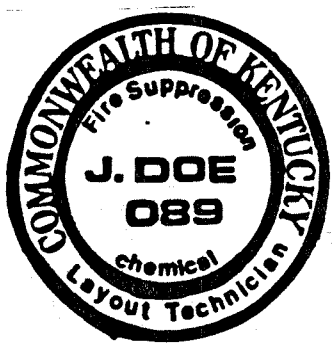
Section 5. Application for Licensed Fire Protection Sprinkler Contractors. (1) Any applicant for licensure shall [must] have a certificate holder in his employ and shall show proof of financial responsibility as required by KRS 198B.590. [must have, in effect, liability insurance in the premium amount of $250,000 per person and $500,000 per accident. For persons seeking to be licensed for the sole purpose of installing, repairing, maintaining and inspecting range hood fire suppression systems, the commissioner shall accept, as evidence of competency, the certification from the manufacturer of the range hood fire suppression system or from a professional engineer who has designed the system.]

[(2) The applicant shall complete and submit the required form together with a certificate of insurance in the amount of $250,000/$500,000 executed by a Kentucky licensed insurer and countersigned by a Kentucky licensed local agent. Such certificates shall remain in force until the insurer has terminated future liability by a thirty (30) day notice to the commissioner.]

(2) [(3)] The applicant shall submit a license fee in the amount of $200. The initial license fee shall be prorated.

Section 6. Certificate Holder Seal. Each certificate holder shall obtain and use a seal for all work prepared by him or under his direct supervision. The design shall be as follows:







Section 7. Certification/Licensure. (1) Upon completion of the requirements of KRS 198B.595 [Section 5 of this regulation], the certificate of competency shall be issued by the commissioner in the name of the certificate holder applicant.

(2) All fire protection sprinkler contractor licenses shall be issued in the name of the firm as set forth on the application and state the name of certificate holder on the face of the license.

(3) Each license and certificate shall expire on June 30 of each year and shall be renewed by refiling the necessary application together with a fee of $100 for each [the] certificate and $200 for each [the] license, prior to June 30.

Section 8. Duties and Responsibilities of Licensed Contractor and Certificate Holder. (1) No person shall represent oneself [himself] as a [certified] fire protection sprinkler contractor without first being licensed by the department in accordance with this regulation.

(2) The design of systems shall be prepared and submitted by either a licensed professional engineer or licensed fire protection sprinkler contractor as required by KRS 198B.565. [No licensed fire protection sprinkler contractor shall design a fire protection sprinkler system for any building requiring the services of an architect or an engineer pursuant to KRS 323.033; however, shop drawings, including hydraulic calculations where required by the engineer may be prepared by the contractor to supplement the design.]

(3) No person shall engage in any activity listed in Section 3 [2] of this regulation unless he is supervised by or has in his employ a certificate holder.

[(4) All material and information supplied by the contractor for a project requiring an engineer's seal shall be submitted to the professional engineer for the project who, in turn, shall submit them to the department and other necessary authority upon the engineer's written approval.]

[(5) The licensed fire protection sprinkler contractor may prepare and submit all plans and documents for the following buildings:]

[(a) Business, assembly, factory, mercantile and storage occupancies of less than 100 person capacity.]

[(b) Residential use groups of twelve (12) or less dwelling units or capacity of less than fifty (50).]

[Section 9. Disciplinary Action. (1) The department may refuse to renew or institute proceedings for the suspension or revocation of certificate holders and licensed contractors, or administrative fines in lieu thereof, not to exceed $500. The following shall constitute charges which are sufficient to initiate disciplinary action:]

[(a) False information or misrepresentation in obtaining such license or certificate.]

[(b) Failure to maintain required insurance.]

[(c) Failure to pay the renewal fee.]

[(d) Gross incompetency or gross negligence in the preparation of drawings, installation, repair, alteration, maintenance, inspection or addition to fire protection sprinkler systems, as determined by the commissioner.]

[(e) Conviction of a felony.]

[(f) Fraudulent or dishonest practices while engaging in the business of fire protection sprinkler systems.]

[(g) Signing or affixing his seal to any plans, prints, specifications or reports which have not been prepared by him personally or under his immediate supervision.]

[(h) Knowingly violating any provisions of KRS 198B.550 through 630 or this regulation.]

[(i) Violation of a Cease and Desist Order issued by the commissioner.]

[(2) The commissioner shall revoke the license of a licensed fire protection sprinkler contractor who engages in the fire protection sprinkler system business while the license is suspended.]

[(3) All suspensions and revocations are appealable to Franklin Circuit Court or the Circuit Court in which the property is located, if filed within thirty (30) days of notice of such revocation or suspension.]

Section 9. [10.] Procedures for Administrative Disciplinary Hearings. Disciplinary action authorized by KRS 198B.620 shall conform to the following procedures:

(1) Upon written complaint that a licensee or certificate holder has engaged in any prohibited behavior or failed to satisfy his responsibilities as set forth in this regulation, the commissioner shall cause an investigation to be made of the matter.

(2) If the commissioner determines that there is probable cause to believe the charges alleged, the commissioner or his designated representative, acting for the department, shall conduct a hearing as provided herein.

(3) In conducting the hearing, the commissioner or his designee shall have the authority to administer oaths and affirmatives, issue subpoenas authorized by law, rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken, regulate the course of any hearings they may schedule and hold conferences for the settlement or simplification of the issues by consent of the parties.

(4) Any order to suspend or revoke a license or certificate and any order firing a licensee or certificate holder shall be signed by the commissioner or approved by him. The commissioner shall issue an order within thirty (30) days of the completion of any hearing subject to this regulation.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 2, 1989
FILED WITH LRC: November 9, 1989 at 8 a.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on December 21, 1989 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. 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: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by December 16, 1989, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
*Because these amendments are made at the request of the Interim Committee on Cities and there are no substantive changes, the answer to the below questions is "none".
(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:
TIERING: Was tiering applied?

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:070. Plumbing fixtures.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the kind, type and quality of plumbing fixtures that are to be used in the construction of plumbing systems. The amendment to this regulation includes the deletion of archaic material as well as amending language to allow the use of alternative materials and clarifying specific standards to be used.

Section 1. Materials. All receptacles used as water closets, urinals, or otherwise for the disposal of human excreta, shall be of vitrified earthenware, hard natural stone, or cast-iron with a light color porcelain enameled on the inside, except as indicated in Section 4 of this regulation.

Section 2. Installation. All plumbing fixtures shall be installed free and open in a manner to afford access for cleaning. Where practical, all pipes from fixtures shall be run to the wall and no trap or pipe shall extend nearer to the floor than twelve (12) inches except laundry trays or similar fixtures.

Section 3. Water Closet Bowls. Water closet bowls shall be made of one (1) piece and of such form as to hold a sufficient quantity of water when filled to the trap overflow to prevent fouling of its interior surfaces, and it shall be provided with an integral flushing rim so constructed as to flush the entire interior of the bowl.

Section 4. Plastic Water Closet Bowl and Tank. Plastic water closet bowl and tank shall be made with a polypropylene lining inside the one (1) piece bowl and tank. The outer surface of the bowl shall be constructed of PVC material and the filler material between the two (2) surfaces shall be made of polyurethane foam. The bowl shall have a three (3) inch water seal and shall have a two and one-eighth (2 1/8) inch waste opening passage.

Section 5. Frost-proof Closet. A frost-proof water closet may be installed only in a building that has at least a twelve (12) inch air break between it and any building used for habitation or occupancy. The room shall be tightly enclosed and accessible from the outside only. The soil pipe between the trap and hopper shall be of extra heavy cast-iron, four (4) inches in diameter and shall be light colored porcelain enamel on the inside. The building must have a nonabsorbent floor. Each frost-proof water closet shall have a four (4) inch vent.

Section 6. (1) Floor drains and shower drains. A floor drain or a shower drain is considered a plumbing fixture and shall be provided with a strainer.
(2) Shower drain pan construction. Shower

drain pans shall be constructed of sheet lead weighing not less than four (4) pounds per square foot, nonplasticized chlorinated polyethylene conforming to ASTM D-412-66, D-12-4-54 and D-568-61 not less than 0.040 inches, nonplasticized polyvinyl chloride (PVC) sheet material conforming to ASTM D-1004, D-2240, D-412 and D-1790 not less than 0.040 inches thick or other approved material. Shower pans shall be constructed without seams and shall extend to a minimum height of six (6) inches on all vertical walls. Shower pans shall not be required on a concrete floor below the outside grade level.

(3) Fiberglass bathtubs, showers, tub enclosures and shower stalls. Fiberglass bathtubs and tub enclosures shall conform to Commercial Standards CS 221-59. Acrylic-faced bathtubs shall conform to ASTM E-84B or E-162. Fiberglass shower stalls and shower receptors shall conform to Commercial Standards CS 222-59.

(4) Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, lavatories and shower stalls. Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, shall conform to ANSI Z 124-1, lavatories to ANSI Z 124-3 and shower stalls to ANSI Z 124-2 [shall conform to ANSI Z-124-3].

[Section 7. Floor Drains, Shower Drains or Urinal Drains in Inaccessible Places. Floor drains, shower drains or urinal drains shall have a cast-iron P trap when installed under concrete floors or in inaccessible places. They shall be either caulk or screw type.]

Section 7. [8.] Fixture Strainers. All fixtures other than water closets and pedestal urinals shall be provided with a [fixed strong, metallic or porcelain] strainer. The total outlet area shall not be less than that of the interior area of the trap.

Section 8. [9.] Fixture Overflow. The overflow from a fixture shall be optional, but if used, shall be connected to the inlet side of a trap and be so arranged that it may be readily and effectively cleaned.

Section 9. [10.] Ventilation of Rooms Containing Fixtures. Refer to BOCA Basic Mechanical Code M-1602.9 and BOCA One and Two Family Dwelling Codes, R-204.3.

Section 10. [11.] Fixture Additions. Any fixture or fixtures added to a plumbing system shall be installed to comply with the other sections of this code[, and the discharge from the additional fixture or fixtures shall enter the soil pipe below the lowest vented opening].

Section 11. [12.] Defective Fixtures. Any newly installed fixtures found defective or old fixtures found to be in any unsanitary condition, shall be repaired, replaced, or removed within thirty (30) days upon written notice from the department.

Section 12. [13.] Water Heaters. (1) A water heater is an appliance for supplying potable hot water for domestic or commercial purposes. It may be used for space heating if the water temperature does not exceed 140 degrees Fahrenheit. Water heaters shall be properly connected to the hot and cold water supply and shall be connected to an adequate size flue or chimney, but in no case shall this be connected to a flue serving a coal burning apparatus. The flue or chimney shall extend two (2) feet above the roof and be properly flashed and shall not terminate within six (6) feet of a door or window. No fuel fired water heater, with the exception of those having direct-vent or through the wall vent systems, shall be placed in any bathroom, toilet room or a room used for sleeping. If a water heater is placed in a closed room or closet the door must be a louver door or provided with proper ventilation to provide combustion air and circulation (see 815 KAR 20:120[, Section 13]).

(2) Direct venting system location. Residential gas-fired direct vent and through the wall type water heaters shall be vented in accordance with the manufacturer's recommendations and shall have as a minimum the National Fuel Gas Association Standards as follows: (NFPA Pamphlet #54). "(a) The vent terminal of a direct vent appliance with an input of 50,000 BTU per hour or less shall be located at least nine (9) inches from any opening through which flue gases could enter a building, and such an appliance with an input over 50,000 BTU per hour shall require a twelve (12) inch vent termination clearance. The bottom of the vent terminal and the air intake shall be located at least twelve (12) inches above grade" (see 815 KAR 20:120, Section 11).

Section 13. [14.] Conservation of Water. (1) Conservation of hot water.

(a) Showers. Showers used for other than safety reasons shall be equipped with approved flow control devices to limit total flow to a maximum of three (3) gpm per shower head.

(b) Lavatories.

1. Lavatories in restrooms of public facilities shall be equipped with outlet devices which limit the flow of domestic hot water to a maximum of 0.75 gpm.

2. Lavatories (other than those listed in subparagraph 1 of this paragraph) and sink faucets shall be equipped with flow control devices which limit the flow of domestic hot water to a maximum of four (4.0) gpm.

(2) Conservation of cold water.

(a) Showers. Showers used for other than safety reasons shall be equipped with approved control devices to limit total flow to a maximum of three (3.0) gpm per shower head.

(b) Lavatories and sink faucets. Lavatories and sink faucets shall be equipped with flow control devices which limit the flow of domestic cold water to a maximum of four (4.0) gpm.

(c) Water closets.

1. Tank type water closets shall not exceed three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters) per flush.

2. Flushometer type water closets shall not exceed three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters) per flush.

(d) Urinals.

1. Tank type urinals shall not exceed three (3) gallons (eleven and four-tenths (11.4) liters) per flush.

2. Flushometer type urinals shall not exceed one and one-half (1 1/2) gallons (five and seven-tenths (5.7) liters) per flush.

(3) Lavatory faucets located in restrooms

intended for public use shall be of the metering or self-closing type except those that are separate for the physically impaired.

(4) The provisions of this section shall apply to all new construction as well as renovations and replacement in existing structures. In satisfaction of the requirements of this section, the Division of Plumbing shall permit the installation of tank type water closets equipped with devices which are found by the inspector to meet applicable standards, in water closets having a tank capacity in excess of three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters). The Division of Plumbing may also allow the use of standard flush water closets and urinals which do not meet the specific standards when, in the opinion of the division, the configuration of the building drainage system requires a greater quantity of water to adequately flush the system, or where the owner requests the use of antique fixtures which may not be equipped for reduced flow.

(5) The equipment required by this section will be mandatory April 1, 1988.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 2, 1989
FILED WITH LRC: November 9, 1989 at 8 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on December 21, 1989 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. 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: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by December 16, 1989, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Licensed master and journeyman plumbers.

(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): State Plumbing Code enforced statewide; no competition.

(b) Reporting and paperwork requirements: No reporting or paperwork to be done to accomplish proposed amendment.

(2) Effects on the promulgating administrative body: Updating State Plumbing Code and distribution.

(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: Revenues would not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None were considered and none were rejected.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known 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: This amendment deletes unnecessary language and clarifies specific standards used.

TIERING: Was tiering applied? Yes

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:090. Soil, waste and vent systems.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to material and the design of the soil, waste and vent systems that will be used in all types of plumbing systems that are constructed throughout the Commonwealth. This amendment includes the deletion of archaic material; combining some material for more efficient application; creating an exception to allow the use of floor recessed receptables with fixed strainer in a tilting braising pan or cooker if the receptor receives no other waste and adding a new standard of PVC pipe. [This amendment is needed to prohibit connecting a house basement floor drain to a sewer system when it has been determined by the treatment facility that such connection is detrimental.]

Section 1. Grades and Supports of Horizontal Piping. All horizontal pipings shall be run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot, and shall be supported or anchored in accordance with the manufacturer's recommendations but in no instance to exceed ten (10) feet in length. All stacks shall be supported at their bases and all pipes shall be rigidly secured. No-hub pipe and fittings shall be supported at each joint of pipe and fittings. Polyvinyl chloride and acrylonitrile-butadiene-styrene schedule forty (40) horizontal piping shall be supported at intervals not to exceed four (4) feet and at the base of all vertical stacks and at all trap branches as close to the trap as possible. Polyethylene pipe and fittings must be continuously supported with a V channel. Stacks must be rigidly supported at their bases and at each floor level.

Section 2. Change in Direction. All changes in direction shall be made by the appropriate use

of forty-five (45) degree wyes, half-wyes, quarter, sixth, eighth or 16the bends, except that a single sanitary tee may be used in a vertical stack, or a sanitary tee may be turned on its back or side at an angle of not more than forty-five (45) degrees.

Section 3. Prohibited Fittings. No double hub bend or double hub tee or inverted hubs shall be used on sewers, soil or waste line. The drilling and tapping of house sewers or house drains, soil, waste or vent pipes, and the use of saddle hubs and bands is prohibited. Double sanitary tees may be used on vertical soil, waste and vent lines. All pipes shall be installed without hubs or restrictions that would reduce the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of any drainage system, dead ends shall be avoided.

Section 5. Protection of Material. All pipes passing under or through walls shall be protected from breakage. All pipes passing through, or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. All main or branch soil, waste and vent pipes and fittings within or underneath a building shall be hub and spigot extra heavy or service weight cast iron, no-hub service weight cast iron, aluminum, galvanized steel, galvanized wrought iron, lead, brass, Types K, L, M, DWV copper, standard high frequency welded tubing conforming to ASTM B-586-73, Types R-K, R-L, R-DWV brass tubing, DWV brass tubing conforming to ASTM B-587-73, seamless stainless steel tubing, Grade G or H conforming to CS-268-68, polyvinyl chloride schedule 40 or 80 conforming to ASTM D-2665-76, [and] D-1784-75 and F-891, acrylonitrile-butadiene-styrene schedule 40 or 80 conforming to ASTM D-2661-76, [and] D-1788-73, silicon iron or borosilicate. All mains or branch soil waste and vent pipe and fittings underground shall either be hub and spigot extra heavy or service weight cast iron, No-hub service weight cast iron, aluminum, Type K or L copper pipe, Type R-K, R-L brass tubing, lead, silicon iron or borosilicate pipe and fittings or plastics DWV listed above.

Section 7. Size of Soil and Waste Pipe per Fixture Unit on any One Stack. The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

Pipe Size (In Inches)	Maximum Developed Length	Fixture Units
1 1/4	25 ft.	1
1 1/2	60 [30] ft.	2
2	80 [50] ft.	6
2 1/2	100 ft.	12
3	225 ft.	36 [30]
4		96
5		180
6		420
8		1200
10		2400
12		4200

All water closets must be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch stack.

[Section 8. Size of Combined Soil and Waste Pipe per Fixture Unit on any One Stack. The following table, based on the rate of discharge from a lavatory as the unit, shall be employed to determine fixture equivalents:]

Pipe Size (In Inches)	[(Maximum Developed Length of Combined Soil and Waste and Vent)	Fixture Units
*3	100 ft.	24
4		96
5		180
6		420
8		1200
10		2400
12		4200

* Not more than two (2) water closets or two (2) bathroom groups.]

[Section 9. Soil and Waste Branch Interval. The total number of fixture units installed on any soil or waste branch interval shall not exceed one-half (1/2) of the fixture units set forth in the table in Section 8, of this regulation.]

Section 8. [10.] Soil, and Vent Stacks. Every building in which plumbing fixtures are installed shall have a soil, waste and/or vent stack, or stacks extending full size through the roof, except as otherwise provided for in Sections 7 [or 8] of this regulation. Soil, waste and/or vent stacks shall be as direct as possible and free from sharp bends or turns. The required size of the soil, waste and/or vent stack shall be determined from the total of all fixture units connected to the stack in accordance with Section 7 [or 8] of this regulation except that no more than three (3) [two (2)] water closets shall discharge into a three (3) inch stack.

Section 9. [11.] Future Openings. All openings left or installed in a plumbing system for future openings shall be complete with its soil and/or waste and vent piping and shall comply with all other sections of this code.

Section 10. [12.] House Drain. (1) Size of house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof must be equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) When a three (3) inch house drain enters a building it shall be provided with a three (3) inch stack. One (1) floor drain may be added to the house drain with a three (3) inch trap provided that it conforms with the requirements of Section 26 [and 30] of this regulation, without counting toward the fixture units of the system. [Eight and one-half (8 1/2) fixture units may be added to the three (3) inch house drain if an additional two (2) inch stack is provided, the fixtures are vented in accordance with Section 23 of this regulation, the center of the last fixture opening does not exceed ten (10) feet (horizontal measures) from the center

line of the house drain and these fixtures are installed on a lower level than the other fixtures in the system.]

Section 11. [13.] Soil and Waste Stacks, Fixture Connections. All soil and waste stacks and branches shall be provided with correctly faced inlets for fixture connections. Each fixture shall be independently connected to the soil and/or waste system. Fixture connections to water closets, floor outlet pedestal sinks, pedestal urinals, or other similar plumbing fixtures shall be made by either cast iron, lead, brass, copper, or plastic closet bends. All three (3) inch closet bends shall have a four (4) inch by three (3) inch flange.

Section 12. [14.] Changing Soil and Vent Pipes. In an existing building where the soil, waste and vent piping is not extended undiminished through the roof or where there is a sheet metal soil or waste piping, such piping shall be replaced with appropriate sizes and materials as prescribed for new work when a fixture or fixtures are changed or replaced.

Section 13. [15.] Prohibited Connections. No fixture connection shall be made to a lead bend or a branch of a water closet or a similar fixture. Vent pipes above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

Section 14. [16.] Soil, Waste and Vent Pipe Protected. No soil, waste, or vent pipe shall be installed or permitted outside a building unless adequate provision is made to protect it from frost. The piping must be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, all properly bound with copper wire or in lieu thereof, the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 15. [17.] Roof Extensions. All roof extensions of soil and waste stacks shall be run full size at least one (1) foot above the roof, and when the roof is used for other purposes than weather protection, such extensions shall not be less than five (5) feet above the roof. All stacks less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof. When a change in diameter is made, the fitting must be placed at least one (1) foot below the roof.

Section 16. [18.] Terminals. If a roof terminus of any stack or vent is within ten (10) feet of the top, bottom, face or side edge of any door, window, scuttle, or air shaft, and not screened from such an opening by a projecting roof or building wall, it shall be extended at least two (2) feet above the top edge of the window or opening.

Section 17. [19.] Terminals Adjoining High Buildings. No soil, waste or vent pipe extension of any new or existing building shall be run or placed on the outside of a wall, but shall be carried up in the inside of the building unless the piping is protected from freezing. In the event, the new building is built higher than the existing building, the owner of the new building shall not locate windows within ten (10) feet of any existing vent stack on the lower building.

Section 18. [20.] Traps, Protected; Vents. Every fixture trap shall be protected against siphonage and backpressure. Air circulation shall be assured by means of an individual vent. Crown vents are not permitted.

Section 19. [21.] Distance of Trap from Vent. (1) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening. The fixture trap vent, except for water closets and similar fixtures, shall not be below the dip of the trap, and all ninety (90) degree turns in the waste [water] line of the main waste, soil, or vent pipes shall be washed. Each fixture trap shall have a vent located with a developed length not greater than that set forth in the table below:

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft. 6 in.
1 1/2	3 ft. 6 in.
2	5 ft.
3	6 ft.
4	10 ft.

(2) A fixture branch on a water closet shall not be more than three (3) feet.

Section 20. [22.] Main Vents to Connect at Base. When a main vent or vent stack is used, it shall connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch and shall extend undiminished in size through the roof or shall be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture. This section shall not apply to one (1) and two (2) story installations. When it becomes necessary to increase a vertical vent stack it then becomes a main vent and must comply with other sections of this code.

Section 21. [23.] Vents; Required Sizes. (1) The required size of a vent or vent stacks shall be determined by the total number of fixture units it serves and the developed length of the vent, in accordance with the following table, interpolating, when necessary, between permissible length of vent given in the following table:

MAXIMUM PERMISSIBLE LENGTHS OF VENTS

Pipe Size (In Inches)	Maximum Length (In Feet)	Fixture Units
1 1/4	30	2
1 1/2	150	10 [8]
2	200	24 [18]
2 1/2	250	36
3	300	72
4	400	240
5	600	420
6	800	720

(2) Except for residential installations, if a fixture opening is installed more than twenty-five (25) feet of developed length from

the point where it is connected to the main soil or waste systems, or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

Section 22. [24.] Branch and Individual Vents. In no instance shall a branch or individual vent be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

Section 23. [25.] Vent Pipes Grades and Connections. All vent and branch vent pipes shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity. Where vent pipes connect to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe, and the vent pipe must rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main, waste, soil or vent.

Section 24. [26.] Vents not Required; Backwater Traps, Subsoil Catch Basin and Basement Floor Drains. Vents shall not be required on a backwater trap, subsoil catch basin trap or a basement floor drain provided that the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet. A basement floor drain also shall not require an individual vent provided it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain. [Vents will not be required on a backwater trap, or a subsoil catch basin trap, or a basement floor drain provided that the basement floor drain is the first opening on the house drain and that the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet to the stack, nor farther than twenty (20) feet. The floor drain line shall be four (4) inches above the house drain. All floor drains on a house drain in between stacks shall be vented. All floor drains shall be the caulk-on-type.]

Section 25. [27.] When Common Vent Permissible. Where two (2) water closets, two (2) lavatories or two (2) of any fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the prescribed distance as set forth in Section 21 of this regulation measured along the center line of the flow of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with the other sections of this code.

Section 26. [28.] Floor Drain Individual Vent not Required. Manufacturers' floor drains do not require individual vents when they are placed on a waste line for floor drains only within the prescribed distance of ten (10) feet from the main waste line, or stack, provided the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack.

Section 27. [29.] Floor drains and service sinks installed on the operational floor level of sewage and water treatment plant facilities which discharge into an open sump and are not connected directly to the sanitary sewage system are not required to be trapped or vented.

[Section 30. A Basement Floor Drain does not require an Individual Vent. A basement floor drain does not require an individual vent if it conforms to Section 26 of this regulation, or if it is the first floor drain on the main and is ahead of all sanitary openings and is not farther than five (5) feet from the main.]

Section 28. [31.] House Drain Material. House drains shall be either extra heavy cast iron, service weight cast iron, brass Type (K) or (L) copper, lead, ABS or PVC plastic, or duriron.

Section 29. [32.] Indirect Waste Connections. Waste pipe from a refrigerator drain or any other receptacle where food is stored or waste water from a water cooled compressor, shall connect indirectly with the house drain, soil or waste pipe. The drain shall be vented to the outside air. Such waste pipes shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with other sections of this code. Such connections shall not be located in an inaccessible or unventilated area.

Section 30. [33.] Bar and Soda Fountain Wastes. Bar and soda fountain wastes, sinks and receptacles shall have a one and one-half (1 1/2) inch P trap and branches. The main shall not be less than two (2) inches. The fresh air pipe shall not be less than one and one-half (1 1/2) inches. The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building. Food storage compartment drains shall be indirectly connected through a trapped receptacle whose upper edge is raised at least one (1) inch above the finished floor line. Floor receptors or floor sinks installed specifically for the indirect wastes from tilting braising pans, tilting kettles and other similar equipment may be installed level with or slightly recessed in the floor provided the receptor is equipped with a proper strainer and receives no other indirect waste.

Section 31. [34.] Open Receptacles. Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground when it discharges into a septic system.

Section 32. [35.] Refrigerator Wastes. Refrigerator waste pipes shall not be less than one and one-half (1 1/2) inches for one (1) to three (3) openings, and at least two (2) inches for four (4) to eight (8) openings. Each opening shall be trapped. Such waste piping shall be provided with sufficient clean-outs to allow for thorough cleaning.

Section 33. [36.] Overflow Pipes. Waste from a water supply tank or exhaust from a water lift shall not directly connect to a house drain,

soil, or waste pipe. Such waste pipe shall discharge upon a roof or into a trapped open receptacle.

Section 34. [37.] Acid and Chemical Wastes. Except as provided herein, no corrosive liquids shall be permitted to discharge into the soil, waste or sewer system. Such waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

Section 35. [38.] Laboratory Waste Piping. Laboratory waste piping shall be sized in accordance with the other sections of this code. Each fixture shall be individually trapped. A continuous waste and vent pipe system may be used, provided the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated when a pit has a ventilated cover. If under certain conditions a dilution pit is not required and is not used, each fixture shall be individually vented. If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof. All fixture branches exceeding more than the distance specified in the table in Section 21 of this regulation from the main shall be revented. The distance shall be measured from the center of the main to the center of the vertical riser. Fixture connections shall rise vertically to a height so that the trap will not be lower than twelve (12) inches from the bottom of the sink. Two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, provided the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

Section 36. [39.] Acid Waste Piping. Underground piping for acid wastes shall be extra heavy salt glazed vitrified pipe, silicon iron, lead, polyethylene pipe and fittings conforming to ASTM D-1204-62T, polypropylene pipe conforming to ASTM D-4101-85, or other materials approved by the department. Piping for acid wastes and vents above ground shall be of silicon iron, lead, borosilicate, or polyethylene pipe conforming to ASTM D-1204-62T, polypropylene pipe conforming to ASTM D-4101-85, or filament-wound reinforced thermosetting resin pipe conforming to ASTM D-2996 (green or poly thread).

Section 37. [40.] Special Vents. Flat or wet vents serving a plumbing fixture may be constructed only with special permission from the department when a plumbing system is being remodeled or when additions are added to an original system; except that flat vents in new construction may also be allowed in commercial buildings when the design of the building prohibits the type of venting required by other sections of this regulation.

Section 38. [41.] Basement Floor Drains and Sanitary Sewage Systems. Basement floor drains shall be connected to the house sewer and properly trapped and vented as set forth in this regulation. EXEMPTION: Basement floor drains, in single family dwellings, shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system. If the drain is not to be connected to the house sewer, the installation is also exempt from the waste, trap and venting provisions of the State Plumbing Code.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: October 19, 1989
FILED WITH LRC: November 9, 1989 at 8 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on December 21, 1989 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. 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: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by December 16, 1989, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: States licensed master and journeyman plumbers.
(a) Direct and indirect costs or savings to those affected: This proposed amendment will have no costs factors involved.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): State Plumbing Code enforced statewide; no competition.
(b) Reporting and paperwork requirements: Proposed amendment would create none.
(2) Effects on the promulgating administrative body: Updating State Plumbing Code and distributing amendments to users.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were rejected; State Plumbing Code Committee and Board of Housing review proposed amendments and accept on basis of acceptability within limits defined.
(5) Identify any statute, administrative regulation or government policy which may be in

conflict, overlapping, or duplication: No known 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: Basically, this amendment deletes some archaic material and revamps some existing material for better application but it also adds a new standard of PVC pipe and creates an exception in the use of a floor recessed receptable.
TIERING: Was tiering applied? Yes

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:110. Traps and clean-outs.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.010, 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the quality, location and the placing of traps and clean-outs to prevent harmful gases and odors from entering buildings and homes that are served by plumbing systems. Amendment of Section 8 of this regulation will allow the use of a Y or T clean-out to be used which has been acceptable plumbing practice for years with a second clean-out either inside or outside the building. Language in Section 15 of this regulation is archaic and was amended to allow a two (2) inch floor drain in residential occupancies, particularly in second story apartments.

Section 1. Traps, Kind and Minimum Size. Every trap shall be self-cleaning. Traps for bathtubs, lavatories, sinks and other similar fixtures shall either be tubular brass, tubular ABS or PVC conforming to ASTM F-409, cast brass, cast iron, lead or schedule 40 PVC (polyvinyl chloride) or ABS (acrylonitrile-butadiene-styrene) traps. Tubular or schedule 40 PVC or ABS p-traps may be either the union-joint or solvent welded type. Tubular brass traps shall be seventeen (17) gauge. No tubular brass, tubular PVC or tubular ABS traps shall be installed below the finished floor serving a fixture. Traps shall have a full-bore, smooth interior waterway. The threads in cast brass and cast iron traps shall be tapped out of solid metal. Lead traps shall be extra heavy.

Section 2. Traps, Prohibited. A trap which depends upon the action of movable parts or concealed interior partitions for its seal shall not be used.

Section 3. Traps, Where required. Each fixture shall be separately trapped by a water-seal trap placed as near to the fixture as possible not to exceed ten (10) inches from the bottom of the fixture to the dip of the seal. In no case shall the waste from a bathtub or other fixture discharge into a water closet bend. No fixture shall be double trapped.

Section 4. Water Seal. A fixture trap shall have a water seal of not less than two (2) inches nor more than four (4) inches.

Section 5. Trap Clean-outs. Trap clean-outs are optional.

Section 6. Trap Levels and Protection. All traps shall be set true with respect to their water seals and shall be protected from frost and evaporation.

Section 7. Pipe Clean-outs. The bodies of clean-out ferrules shall be made in standard pipe sizes, conforming in thickness to that of pipe and fittings and shall extend not less than one-quarter (1/4) inch above the hub in which it is placed. The clean-out cap, or plug shall be heavy red brass not less than one-eighth (1/8) inch thick and shall have a raised nut or recessed pocket for removal.

Section 8. Pipe Clean-outs, where Required. A clean-out easily accessible, shall be provided at the base of each vertical waste or soil stack. There shall be at least two (2) clean-outs in the house drain, one (1) at or near the base of the stack and the other with full size [Y] branch inside the wall or outside the building at a point not beyond two (2) feet from the foundation wall. Clean-outs shall be of the same nominal size as the pipe it serves up to four (4) inches, and not less than four (4) inches for larger pipe.

Section 9. Manholes. All underground clean-outs in a building, except where clean-outs are flush with the floor or wall, shall be made accessible by a manhole or with a proper cover.

Section 10. Clean-outs (Equivalents). Any floor or wall connection of a fixture trap whether bolted or screwed to the floor or wall, shall be regarded as a clean-out with the exception of the clean-out where the house drain enters a building.

Section 11. Grease Traps. When a grease trap is installed, it shall be placed as near as possible to the fixture it serves and shall be approved by the department. All grease traps used inside a building shall have a sealed cover and shall be properly vented. Grease traps shall be installed for all restaurants and food service establishments as well as other types of businesses deemed necessary by the Department of Housing, Buildings and Construction or as required by municipal ordinance. In the case of food establishments using a private sewage system, grease traps shall be installed as required in the Cabinet for Human resources regulation 902 KAR 10:085.

Section 12. Sand Traps. Sand traps shall be designed and located so as to be readily accessible and shall meet the requirements of the department.

Section 13. Basement Floor Drains. A basement floor drain shall connect into a trap so constructed that it can be readily cleaned and of a size to serve efficiently the purpose for which it is intended. When subject to back flow or back pressure, such drains shall be equipped

with an adequate backwater valve. The trap seal shall be at least four (4) inches above the flow line of the house drain.

Section 14. Back Water Valves. A back water valve shall be of noncorrosive metals and so constructed as to insure a positive mechanical seal except when discharging wastes.

Section 15. Residential Utility Room Floor Drains. A two (2) inch floor drain with an individual waste and vent may be installed in a residential utility room. [utility room floor drain with an individual waste shall be provided with a two (2) inch vent increased to three (3) inches before passing through the roof of a building.]

Section 16. Directional Flow Fittings and Continuous-waste. Kitchen sink units, or fixtures with more than one (1) unit may be connected with a continuous-waste, provided a directional flow fitting is used. Continuous-waste shall be either seventeen (17) gauge tubular brass or schedule 40 ABS or PVC or tubular ABS or PVC material.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: October 19, 1989
FILED WITH LRC: November 9, 1989 at 8 a.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on December 21, 1989 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. 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: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by December 16, 1989, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: Licensed master and journeyman plumbers.
(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): State Plumbing Code enforced statewide; no competition.
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: Updating State Plumbing Code and distributing amendments.
(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: Revenues would not be affected.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None rejected.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known 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: Proposed amendment allows acceptable alternative to practice already implemented and amends archaic language.
TIERING: Was tiering applied? Yes

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:022. Kentucky administrative process for child support.

RELATES TO: KRS Chapters 205, 405, 45 CFR Parts 301-307
STATUTORY AUTHORITY: KRS 405.405 through 405.991 [405.520]
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility for administering the child support program in accordance with Title IV-D of the Social Security Act, Title 45 CFR Sections 301, 302, 303, 304, 305, 306, and 307 and KRS 205.710 to 205.800. In addition, KRS 405.405 [400] to 405.991 [530], the Kentucky Administrative Process for Child Support Act, provides for the establishment and enforcement of child support obligations through administrative process when paternity is not in question. The administrative process supplements existing judicial remedies for nonsupport. Administrative process may be used to establish and enforce support obligations for children receiving Aid to Families with Dependent Children (AFDC) benefits as well as for non-AFDC children. This regulation sets forth the procedures the cabinet shall employ in administratively establishing and enforcing child support obligations.

Section 1. Definitions. In addition to the terms defined in KRS 205.710, the following terms shall be defined as set forth below.
(1) "Administrative process" means a method for establishing and enforcing child support obligations pursuant to KRS 405.405 [400] to 405.991 [530] and the provisions of this regulation.
(2) "Appointment letter" means the cabinet's notification to the obligor that his liability for support of the child is being determined. A financial statement for the parent's completion will be included with the appointment letter.
(3) "Default" means the obligor's failure to return the financial statement or to keep an appointment to determine a support obligation under administrative process.
(4) "Notice of [minimum] monthly support obligation" means an administrative order issued

by the cabinet pursuant to KRS 405.440 notifying the obligor of the amount of the child support obligation and of the obligor's rights to request a hearing.

(5) "Dispute hearing" means the process whereby the obligor's objections to a notice of [minimum] monthly support obligation are heard by an impartial hearing officer upon a timely request.

(6) "Person in possession or control" means the person who has custody of the earnings or property.

(7) "Order to withhold" means an administrative order issued by the cabinet to a person in possession or control of the obligor's earnings or property to withhold an amount equal to a stated arrearage to satisfy a delinquent child support obligation.

(8) "Order to deliver" means an administrative order issued by the cabinet to have earnings or property, belonging to the obligor, forwarded by the person in possession or control of the earnings or property to the cabinet to satisfy delinquent child support.

(9) "Delinquent support" means past due and unpaid installments on an obligation determined under a court order or a Cabinet for Human Resources administrative order (KRS 405.430) for support of a dependent child, which is owed to or on behalf of the child, or for maintenance to the spouse (or former spouse) with whom the child is living, only if a maintenance obligation has been established with respect to the spouse and the support obligation established with respect to the child is being enforced under the state's IV-D plan.

(10) "Order to release withholding" means an order to the person in possession or control of an obligor's earnings or property notifying that person that the cabinet is releasing any claim to the designated earnings or property.

(11) "Order to withhold earnings" means an administrative order issued by the cabinet to an obligor's employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of the delinquent support.

Section 2. Administrative Establishment. The cabinet may administratively establish a child support obligation when paternity is not in question, there is no existing order for support of the child and the parent resides or is employed in Kentucky. The cabinet shall send an appointment letter and a financial statement to the parent to assure the parent's right to participate in the establishment of the support obligation. Additionally, the cabinet may administratively establish the debt which accumulated during the first ninety (90) days of AFDC eligibility as an arrearage due the cabinet. Pursuant to KRS 205.792, the ninety (90) days may be extended.

(1) The cabinet shall determine the [minimum] monthly support obligation in accordance with the Kentucky Child Support Guidelines as set forth in 904 KAR 2:025 [KRS 405.430].

(2) In default cases, or cases in which the responsible parent fails or refuses to provide sufficient information to determine gross income, the cabinet shall set the obligation based on the needs of the child or children as follows: one (1) child - $207; two (2) children - $325; three (3) children - $436; four (4) or more children - $542. Such child support obligations may be retroactively modified upward, without a showing of change in circumstances, at such time as sufficient evidence becomes available. [at the minimum cost basis on the scale for the number of children in the case.]

(3) If subsequent to the establishment of the child support obligation, the cabinet determines that the obligor's actual income was greater than what was reported, the cabinet may retroactively increase the support obligation to the correct amount and may recover the additional support which should have been paid under the correct obligation.

[(a) The following steps shall be used in applying the scale:]

[1. The gross income, less allowable deductions, of the noncustodial parent shall be added to the gross income, less allowable deductions, of the custodial parent to determine the "Annual Family Gross Income."]

[2. At the annual family gross income level in the left hand column, the lower of the "income cap" or "cost basis" shall be selected for the number of children in the case.]

[3. The noncustodial parent's gross income shall be divided by the annual family gross income to obtain the percentage of support to be apportioned to the noncustodial parent.]

[4. The figure selected in subparagraph 2 of this paragraph shall be multiplied by the percentage from subparagraph 3 of this paragraph to obtain the minimum monthly support obligation.]

[(b) The scale is set forth below:]

Annual Family Gross Income	[One (1) Child Cost Basis	(20%) Income Cap	Two (2) Children Cost Basis	(25%) Income Cap	Three (3) Children Cost Basis	(30%) Income Cap	Four (4) Children Cost Basis	(35%) Income Cap
$ 0-$ 1,000	$207	$ 60	$325	$ 60	$ 436	$ 60	$ 542	$ 60
$ 1,000-$ 1,250	$207	$ 60	$325	$ 60	$ 436	$ 60	$ 542	$ 60
$ 1,251-$ 1,500	$207	$ 60	$325	$ 60	$ 436	$ 60	$ 542	$ 60
$ 1,501-$ 1,750	$207	$ 60	$325	$ 60	$ 436	$ 60	$ 542	$ 60
$ 1,751-$ 2,000	$207	$ 60	$325	$ 60	$ 436	$ 60	$ 542	$ 60
$ 2,001-$ 2,250	$207	$ 60	$325	$ 60	$ 436	$ 60	$ 542	$ 62
$ 2,251-$ 2,500	$207	$ 60	$325	$ 60	$ 436	$ 60	$ 542	$ 69
$ 2,501-$ 2,750	$207	$ 60	$325	$ 60	$ 436	$ 66	$ 542	$ 77
$ 2,751-$ 3,000	$207	$ 60	$325	$ 60	$ 436	$ 72	$ 542	$ 84
$ 3,001-$ 3,250	$207	$ 60	$325	$ 65	$ 436	$ 78	$ 542	$ 91
$ 3,251-$ 3,500	$207	$ 60	$325	$ 70	$ 436	$ 84	$ 542	$ 98
$ 3,501-$ 3,750	$207	$ 60	$325	$ 76	$ 436	$ 91	$ 542	$ 106
$ 3,751-$ 4,000	$207	$ 65	$325	$ 81	$ 436	$ 97	$ 542	$ 113
$ 4,001-$ 4,250	$207	$ 69	$325	$ 86	$ 436	$ 103	$ 542	$ 120
$ 4,251-$ 4,500	$207	$ 73	$325	$ 91	$ 436	$ 109	$ 542	$ 128
$ 4,501-$ 4,750	$207	$ 77	$325	$ 96	$ 436	$ 116	$ 542	$ 135
$ 4,751-$ 5,000	$207	$ 81	$325	$ 102	$ 436	$ 122	$ 542	$ 142
$ 5,001-$ 5,250	$207	$ 85	$325	$ 107	$ 436	$ 128	$ 542	$ 149
$ 5,251-$ 5,500	$207	$ 90	$325	$ 112	$ 436	$ 134	$ 542	$ 157
$ 5,501-$ 5,750	$209	$ 94	$325	$ 117	$ 436	$ 141	$ 542	$ 164
$ 5,751-$ 6,000	$211	$ 98	$325	$ 122	$ 436	$ 147	$ 542	$ 171
$ 6,001-$ 6,250	$213	$102	$325	$ 128	$ 436	$ 153	$ 542	$ 179
$ 6,251-$ 6,500	$215	$106	$325	$ 133	$ 436	$ 159	$ 542	$ 186
$ 6,501-$ 6,750	$217	$110	$325	$ 138	$ 436	$ 166	$ 542	$ 193
$ 6,751-$ 7,000	$219	$115	$325	$ 143	$ 436	$ 172	$ 542	$ 201
$ 7,001-$ 7,250	$221	$119	$325	$ 148	$ 436	$ 178	$ 542	$ 208
$ 7,251-$ 7,500	$223	$123	$325	$ 154	$ 436	$ 184	$ 542	$ 215
$ 7,501-$ 7,750	$225	$127	$325	$ 159	$ 436	$ 191	$ 542	$ 222
$ 7,751-$ 8,000	$227	$131	$325	$ 164	$ 436	$ 197	$ 542	$ 230
$ 8,001-$ 8,250	$229	$135	$325	$ 169	$ 436	$ 203	$ 542	$ 237
$ 8,251-$ 8,500	$232	$140	$325	$ 174	$ 436	$ 209	$ 542	$ 244
$ 8,501-$ 8,750	$234	$144	$325	$ 180	$ 436	$ 216	$ 542	$ 252
$ 8,751-$ 9,000	$236	$148	$325	$ 185	$ 436	$ 222	$ 542	$ 259
$ 9,001-$ 9,250	$238	$152	$325	$ 190	$ 436	$ 228	$ 542	$ 266
$ 9,251-$ 9,500	$240	$156	$325	$ 195	$ 436	$ 234	$ 542	$ 273
$ 9,501-$ 9,750	$242	$160	$325	$ 201	$ 436	$ 241	$ 542	$ 281
$ 9,751-$10,000	$244	$165	$325	$ 206	$ 436	$ 247	$ 542	$ 288
$10,001-$10,250	$246	$169	$325	$ 211	$ 436	$ 253	$ 542	$ 295
$10,251-$10,500	$248	$173	$325	$ 216	$ 436	$ 259	$ 542	$ 303
$10,501-$10,750	$250	$177	$325	$ 221	$ 436	$ 266	$ 542	$ 310
$10,751-$11,000	$252	$181	$325	$ 227	$ 436	$ 272	$ 542	$ 317
$11,001-$11,500	$258	$188	$342	$ 234	$ 448	$ 281	$ 542	$ 328
$11,501-$12,000	$263	$196	$360	$ 245	$ 459	$ 294	$ 542	$ 343
$12,001-$12,500	$269	$204	$377	$ 255	$ 471	$ 306	$ 542	$ 357
$12,501-$13,000	$274	$213	$395	$ 266	$ 483	$ 319	$ 542	$ 372
$13,001-$13,500	$280	$221	$412	$ 276	$ 495	$ 331	$ 542	$ 386
$13,501-$14,000	$286	$229	$430	$ 287	$ 506	$ 344	$ 542	$ 401
$14,001-$14,500	$291	$238	$447	$ 297	$ 518	$ 356	$ 544	$ 416
$14,501-$15,000	$297	$246	$465	$ 307	$ 530	$ 369	$ 556	$ 430
$15,001-$15,500	$302	$254	$482	$ 318	$ 542	$ 381	$ 569	$ 445
$15,501-$16,000	$308	$263	$500	$ 328	$ 553	$ 394	$ 581	$ 459

$16,001-$16,500	$313	$271	$517	$ 339	$ 565	$ 406	$ 593	$ 474
$16,501-$17,000	$319	$279	$521	$ 349	$ 577	$ 419	$ 606	$ 489
$17,001-$17,500	$325	$288	$524	$ 359	$ 589	$ 431	$ 618	$ 503
$17,501-$18,000	$330	$296	$528	$ 370	$ 600	$ 444	$ 630	$ 518
$18,001-$18,500	$336	$304	$531	$ 380	$ 612	$ 456	$ 643	$ 532
$18,501-$19,000	$341	$313	$535	$ 391	$ 624	$ 469	$ 655	$ 547
$19,001-$19,500	$347	$321	$538	$ 401	$ 636	$ 481	$ 668	$ 561
$19,501-$20,000	$353	$329	$542	$ 411	$ 648	$ 494	$ 680	$ 576
$20,001-$20,500	$358	$338	$545	$ 422	$ 660	$ 506	$ 693	$ 591
$20,501-$21,000	$364	$346	$549	$ 432	$ 671	$ 519	$ 705	$ 605
$21,001-$21,500	$369	$354	$552	$ 443	$ 683	$ 531	$ 717	$ 620
$21,501-$22,000	$375	$363	$556	$ 453	$ 695	$ 544	$ 730	$ 634
$22,001-$22,500	$384	$371	$559	$ 464	$ 702	$ 556	$ 737	$ 649
$22,501-$23,000	$393	$379	$563	$ 474	$ 709	$ 569	$ 744	$ 664
$23,001-$23,500	$402	$388	$566	$ 484	$ 716	$ 581	$ 751	$ 678
$23,501-$24,000	$410	$396	$570	$ 495	$ 722	$ 594	$ 759	$ 693
$24,001-$24,500	$419	$404	$573	$ 505	$ 729	$ 606	$ 766	$ 707
$24,501-$25,000	$428	$413	$577	$ 516	$ 736	$ 619	$ 773	$ 722
$25,001-$25,500	$437	$421	$580	$ 526	$ 743	$ 631	$ 780	$ 736
$25,501-$26,000	$446	$429	$584	$ 536	$ 750	$ 644	$ 787	$ 751
$26,001-$26,500	$455	$438	$587	$ 547	$ 757	$ 656	$ 795	$ 766
$26,501-$27,000	$464	$446	$591	$ 557	$ 764	$ 669	$ 802	$ 780
$27,001-$27,500	$472	$454	$594	$ 568	$ 771	$ 681	$ 809	$ 795
$27,501-$28,000	$481	$463	$598	$ 578	$ 777	$ 694	$ 816	$ 809
$28,001-$28,500	$490	$471	$601	$ 589	$ 784	$ 706	$ 823	$ 824
$28,501-$29,000	$499	$479	$605	$ 599	$ 791	$ 719	$ 831	$ 839
$29,001-$29,500	$508	$488	$608	$ 609	$ 798	$ 731	$ 838	$ 853
$29,501-$30,000	$517	$496	$612	$ 620	$ 805	$ 744	$ 845	$ 868
$30,001-$30,500	$526	$504	$615	$ 630	$ 812	$ 756	$ 852	$ 882
$30,501-$31,000	$535	$513	$619	$ 641	$ 819	$ 769	$ 859	$ 897
$31,001-$31,500	$543	$521	$622	$ 651	$ 825	$ 781	$ 867	$ 911
$31,501-$32,000	$552	$529	$626	$ 661	$ 832	$ 794	$ 874	$ 926
$32,001-$32,500	$561	$538	$629	$ 672	$ 839	$ 806	$ 881	$ 941
$32,501-$33,000	$570	$546	$633	$ 682	$ 846	$ 819	$ 888	$ 955
$33,001-$34,000	$575	$558	$647	$ 698	$ 860	$ 838	$ 903	$ 977
$34,001-$35,000	$581	$575	$661	$ 719	$ 873	$ 863	$ 917	$1,006
$35,001-$36,000	$586	$592	$675	$ 740	$ 887	$ 888	$ 932	$1,035
$36,001-$37,000	$591	$608	$690	$ 760	$ 901	$ 913	$ 946	$1,065
$37,001-$38,000	$597	$625	$704	$ 781	$ 915	$ 938	$ 960	$1,094
$38,001-$39,000	$602	$642	$718	$ 802	$ 928	$ 963	$ 975	$1,123
$39,001-$40,000	$607	$658	$732	$ 823	$ 942	$ 988	$ 989	$1,152
$40,001-$41,000	$613	$675	$746	$ 844	$ 956	$1,013	$1,004	$1,181
$41,001-$42,000	$618	$692	$760	$ 865	$ 970	$1,038	$1,018	$1,210
$42,001-$43,000	$623	$708	$774	$ 885	$ 983	$1,063	$1,032	$1,240
$43,001-$44,000	$629	$725	$788	$ 906	$ 997	$1,088	$1,047	$1,269
$44,001-$45,000	$634	$742	$803	$ 927	$1,020	$1,113	$1,071	$1,298
$45,001-$46,000	$639	$758	$817	$ 948	$1,044	$1,138	$1,096	$1,327
$46,001-$47,000	$644	$775	$831	$ 969	$1,067	$1,163	$1,121	$1,356
$47,001-$48,000	$650	$792	$845	$ 990	$1,091	$1,188	$1,145	$1,385
$48,001-$49,000	$655	$808	$859	$1,010	$1,114	$1,213	$1,170	$1,415
$49,001-$50,000	$660	$825	$873	$1,031	$1,138	$1,238	$1,196	$1,444
$50,001-$51,000	$666	$842	$987	$1,052	$1,161	$1,263	$1,219	$1,473
$51,001-$52,000	$671	$858	$902	$1,073	$1,185	$1,288	$1,244	$1,502
$52,001-$53,000	$676	$875	$916	$1,094	$1,208	$1,313	$1,268	$1,531
$53,001-$54,000	$682	$892	$930	$1,115	$1,232	$1,338	$1,293	$1,560
$54,001-$55,000	$687	$908	$944	$1,135	$1,255	$1,363	$1,318	$1,590
$55,001 Plus	$676		$944		$1,255		$1,318]	

(4) [(2)] After the [minimum] monthly support obligation and arrearage due the cabinet have been determined, the cabinet shall serve the notice of [minimum] monthly support obligation upon the obligor either in person or by certified mail, return receipt requested, in accordance with KRS 405.440.

(5) The effective date of the obligation shall be twenty (20) days after the absent parent receives or refuses to accept the CS-66 and does not contest it.

[(a) The effective date of the obligation shall be the first day of the month following the month the parent receives the notice of minimum monthly support obligation.]

(6) [(b)] In accordance with KRS 405.430(2), the cabinet may modify the [minimum] monthly support obligation as established by the cabinet.

[1. If, while verifying the income information, the cabinet finds that the obligor's earnings are greater than what was previously reported, the cabinet may increase the support obligation. The cabinet may recover additional support which should have been paid under the correct obligation.]

[2.] The cabinet shall not modify any obligation which was established by a court of competent jurisdiction.

Section 3. Appeal Procedures. The obligor may request a dispute hearing in accordance with KRS 405.440. An impartial hearing officer shall conduct the dispute hearing in the county of the child's or obligor's residence. The hearing shall be scheduled within sixty (60) days of the request. The obligor may request a hearing pursuant to the instructions in the notice of [minimum] monthly support obligation.

(1) The request for a dispute hearing shall be considered timely if:

(a) Made within twenty (20) days of receipt of a notice of [minimum] monthly support obligation;

(b) Made within twenty (20) days after the obligor is notified that a request for modification of the obligation will not be honored; or

(c) Made after thirty (30) days but before fifty (50) days have passed since the obligor requested a modification of the obligation, but the cabinet has not acted upon the request.

(2) If the request is not made within the time period specified in subsection (1) of this section, the obligor must show good cause for the late request. Good cause reasons may include, but are not limited to:

(a) The obligor's being away from home during the entire filing period;

(b) The obligor's inability to read the notice of [minimum] monthly support obligation; or

(c) The obligor's incapacity due to a serious illness during the entire filing period.

(3) The obligor or his authorized representative may review case material pertinent to the reason for the dispute and may present witnesses at the hearing.

(4) If the objection is being filed on an original notice of [minimum] monthly support obligations, the obligation shall be stayed pursuant to KRS 405.450(2).

(5) If the objection is being filed on a request for modification of obligation, the amount on the prior notice is enforceable and that amount must be paid while the hearing is pending.

(a) If the obligor prevails, the cabinet shall promptly return to the obligor any overpayments made since the hearing was requested.

(b) If the cabinet prevails, the obligation will be retroactive to the effective date on the notice of [minimum] monthly support obligation.

(6) The obligor may withdraw the hearing request by writing to the local IV-D office or the Hearing Branch in the Department for Social Insurance's Division of Administrative Review.

(7) The obligor or the cabinet may file an appeal to the circuit court within twenty (20) days after receipt of the hearing officer's decision pursuant to KRS 405.450.

Section 4. Mandatory Withholding of Earnings. The cabinet shall initiate withholding of earnings procedures when a delinquency equal to the amount of support payable for one (1) month is identified for cases in which the order was entered prior to July 15, 1988. The cabinet shall issue advance notice to the obligor prior to the implementation of the withholding.

(1) The advance notice to the obligor is to be sent by certified mail, return receipt requested, and shall contain at a minimum the following information:

(a) The amount of the delinquent support and the amount to be withheld, including the amount to be applied toward the liquidation of overdue support;

(b) Notification that the order to withhold earnings applies to the obligor's current and any subsequent employers;

(c) That only mistakes of fact, i.e., wrong person identified or incorrect amount of overdue or current support, may be contested;

(d) Procedures for contesting the order; and

(e) Notification that the obligor shall contact the cabinet within ten (10) days from the date the notice was received or refused to contest the order. Failure to contact the cabinet in a timely fashion shall result in the implementation of the withholding.

(2) If the obligor contests the withholding of earnings, he shall be given an opportunity to state and defend his case, including the right to present to the cabinet copies of subsequent support orders or payment records.

(a) Within forty-five (45) days of the date of the advance notice, the cabinet shall determine whether withholding of earnings is appropriate and notify the obligor of the results of the case review.

(b) If withholding is to begin, a copy of the order to withhold earnings shall be sent to the obligor.

(3) The order to withhold earnings shall be served on the employer by certified mail, return receipt requested. It shall include at a minimum the following information:

(a) The obligor's Social Security number;

(b) The amount to be withheld, including amounts to be applied toward delinquent support;

(c) Notification that the total amount withheld cannot exceed the maximum permissible under the Consumer Credit Protection Act;

(d) Notification that withholding shall begin no later than the first pay period that occurs after fourteen (14) days following the date the order to withhold earnings was mailed;

(e) That the employer shall send the remittance to the agency designated by the cabinet within ten (10) days of date the obligor is paid and include the IV-D number or Social Security number, and the date the money was

withheld from the obligor;

(f) That the employer may combine amounts due the agency designated by the cabinet into one (1) transmittal if the employer identifies by IV-D account number or Social Security number and the date withheld the amount attributable to each obligor.

[1. If more than one (1) order against the obligor exists, the cabinet shall allocate the payments among the obligor's cases;]

[2. Payments shall first be applied toward the current month's support obligation(s);]

[3. In cases where there are multiple orders being enforced by the cabinet against the obligor, payments shall be credited first to the account of the case containing the oldest order to withhold earnings;]

(g) That the order to withhold earnings is binding until further notice and that the employer shall be liable for the accumulated amount if he fails to abide by the order;

(h) That pursuant to KRS 405.991, the employer shall be subject to a fine or a jail sentence for discharging, refusing to employ, or taking disciplinary action against the obligor because of the withholding of earnings;

(i) That the employer shall notify the cabinet when the obligor's employment is terminated, giving the cabinet the new employer's name and address and the obligor's last known address, if known; and

(j) That the employer may deduct an additional sum of one (1) dollar for each payment made pursuant to the order to cover his administrative costs.

(4) The order to withhold earnings may be terminated as deemed appropriate by the secretary; however, payment of the delinquent support shall not constitute the sole basis for the prevention or termination of the order to withhold earnings.

(5) For those cases in which the order was entered prior to July 15, 1988, the cabinet may initiate withholding of earnings procedures prior to the accumulation of one (1) month's arrearage upon the request of the obligor.

(6) Withholding shall take effect immediately for cases in which the order is entered on or after July 15, 1988 unless the obligor shows good cause.

(a) Good cause shall be determined to exist if payment records indicate the obligor has voluntarily contributed support in an amount equal to at least seventy-five (75) percent of the newly established obligation.

(b) If good cause is shown, withholding shall take effect when an arrearage accrues that is equal to the amount of support payable for one (1) month.

Section 5. Additional Administrative Enforcement Remedies. When the cabinet determines that the obligor owes delinquent support, the cabinet may implement administrative enforcement remedies to collect the delinquent support amounts. Personal property shall be exempted from attachment as specified in KRS 427.060.

(1) Order to withhold. When a delinquency equal to the amount of support payable for one (1) month is identified, the cabinet shall determine the total amount of support owed. The cabinet shall serve an order to withhold to the person(s) in possession or control of the obligor's earnings or property. A copy of the order to withhold shall be provided to the obligor. The order shall state the basis for and the amount of the delinquent support and shall state that the obligor may offer a bond satisfactory to the cabinet to avoid losing possession of the property.

(a) When one (1) or more person(s) in possession or control of the obligor's earnings or property is identified, the cabinet may issue and serve an order to withhold for each person in possession or control. When more than one (1) person in possession or control answers the order to withhold and the combined assets exceed the amount of the delinquent support, the cabinet shall:

1. Decide which person in possession or control to serve with an order to deliver. The cabinet may take into consideration the obligor's request as to which source to withhold.

2. Send an order to release withholding to any person in possession or control not being served with an order to deliver.

3. Request only a portion of an asset to satisfy the delinquent support when the total asset exceeds the amount of delinquent support.

(b) The obligor may contact the cabinet for an explanation of administrative enforcement. The cabinet may accept partial payment sufficient to release the order to withhold when deemed appropriate by the secretary.

(2) Order to deliver. When the employer or the person in possession or control of the earnings or property responds to the order to withhold, the cabinet may complete and serve on the person in possession or control an order to deliver the earnings or property to the cabinet. Earnings or property delivered to the cabinet in accordance with an order to deliver shall be applied to the amount of delinquent support pursuant to federal law.

(3) Order to release withholding. The cabinet shall issue and serve an order to release withholding on its claim on the obligor's earnings or property when the stated delinquent support is satisfied.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: November 10, 1989

FILED WITH LRC: November 14, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1989 at 9 a.m. at the Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director
(1) Type and number of entities affected: None
(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: This action is purposed to avoid overlapping or conflict with 904 KAR 2:025.
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Federal and state statutes mandate that administrative process of child support be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Family Support Act of 1988.
2. State compliance standards. Administrative regulation 904 KAR 2:025 was created to establish the Kentucky Child Support Guidelines; therefore, in order to avoid overlapping or conflict, the existing scale for child support obigations is being deleted.
3. Minimum or uniform standards contained in the federal mandate. None
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. None

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:414. Incorporation by reference of the Dental Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the dental services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Dental Services Manual, revised October 1, 1989 [September 1, 1988], used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference 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 will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: October 12, 1989
FILED WITH LRC: October 19, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of dental services are potentially affected.
(a) Direct and indirect costs or savings to

those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 3:080. Policies and procedures of Hazelwood ICF-MR.

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 194.050, 202A.196, 202B.060, 210.010, 210.040, 210.045, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010 directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters.

Section 1. Polices and procedures of Hazelwood ICF/MR as set forth in the November 15, 1989 [August 15, 1989,] edition of the Hazelwood policy manual consisting of five (5) volumes relating to the operation of Hazelwood ICF-MR are incorporated by reference.

Section 2. These policies and procedures contained in five (5) volumes with a total of 186 pages. They are available for inspection or copy at the office of the Commissioner of the Department of Mental Health/Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky, and at Hazelwood, 1800 Bluegrass Avenue, Louisville, Kentucky.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: November 2, 1989
FILED WITH LRC: November 14, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 21, 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 December 16, 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: This amendment changes the title of recipients from "resident" to "client".
(a) Direct and indirect costs or savings to those affected: None. This regulation deals with the treatment of residents.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: There will be very little change in procedures.
(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: This has no effect on revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation 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: This is an administory to incorporate manuals by reference.
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 440.150 through 42 CFR 483.480, or 42 CFR Part 489.
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 NOVEMBER 15, 1989

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.

WALLACE G. WILKINSON, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: November 13, 1989
FILED WITH LRC: November 13, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 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 December 16, 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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services

702 KAR 6:081. Repeal of 702 KAR 6:080.

RELATES TO: KRS 156.010, 156.031, 156.035, 42 U.S.C. §1751 to §1769b
STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070
NECESSITY AND FUNCTION: Accrual cost accounting is no longer required as a basis for reimbursement of meals served under the National School Lunch Program, so 702 KAR 6:080 is no longer necessary.

Section 1. 702 KAR 6:080, Accrual cost accounting, is hereby repealed.

ROBERT E. RUBERG, Vice Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at noon
PUBLIC HEARING: A public hearing has been scheduled on Thursday, December 28, 1989 at 10 a.m. (EST) 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 November 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 December 23, 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: Paul McElwain
(1) Type and number of entities affected: 177 public school districts.
(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: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Regulation is to be applied equally to all districts participating in federal child nutrition programs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC §1751 to §1769b.
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. Accrual cost accounting no longer required.
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.

MOREHEAD STATE UNIVERSITY
Board of Regents

755 KAR 1:010. Acquisition and disbursement of funds.

RELATES TO: KRS 164A.560, 164A.595
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits governing boards of each public institution of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.560 and 164A.565 at Morehead State University.

Section 1. The Board of Regents of Morehead State University elects to receive, deposit, collect, retain, invest, disburse, and account for all funds received or due from any source including, but not limited to, state and federal appropriations for the support or maintenance of the general operations or special purpose activities of Morehead State University.
(1) The treasurer of the university shall deposit, on a timely basis, all tuition fees, fees for room and board, incidental fees, contributions, gifts, donations, devices, state and federal appropriations, monies received from sales and services, admittance fees, and all other monies received from any source, in a depository bank or banks designated by the Board of Regents.
(2) All disbursements shall be limited to the amounts and for the purpose for which state appropriations have been made, or for which other monies have been received. All disbursements shall be recorded in a system of accounts as set forth in this regulation. The treasurer of the university shall prescribe forms to be used with the system of accounts, and the treasurer shall not approve any disbursement document unless he determines that the disbursement is to satisfy a liability of the institution incurred for authorized purposes and that the disbursement is to be made from the unexpended balance of a proper allotment.
(3) These functions of the treasurer may be carried out by the Vice President for Administrative and Fiscal Services and such directors, accountants, and cashiers as the treasurer may authorize in writing in accord with sound business practices.

Section 2. The accounting system of Morehead State University shall be an accrual basis accounting system conforming with generally accepted accounting principles and procedures established for colleges and universities by the National Association of College and University Business Officers and the American Institute of Certified Public Accountants. The accounting system shall include, but not be limited to, the following fund structure:
(1) An operating fund group (unrestricted current funds), consisting of all monies not otherwise restricted, available for general operations including state appropriations, federal funds, and unrestricted institutional receipts. Separate accounting fund groups may be established for auxiliary enterprises and other similar operations.
(2) A restricted fund group consisting of appropriations and other receipts restricted as to purpose which shall not be included in the operating fund.
(3) A loan fund group consisting of gifts, grants, and other funds provided and available for loans to students.
(4) An agency fund group consisting of resources held by the institution as custodial or fiscal agent for individual students, faculty, staff members and organizations.
(5) A plant fund group consisting of:
(a) Unexpended plant funds to be used for the acquisition of long-lived assets for institutional purposes (capital construction funds);
(b) Funds for renewal, maintenance, and replacement of institutional buildings, equipment and other properties; and
(c) Funds set aside for debt service charges and retirement of indebtedness on institutional plant.

Section 3. A record of each general fund appropriation shall be maintained so as to identify the institutional budgets to which such funds are allotted. Any uncommitted state general funds remaining after the close of business on the last day of the fiscal year shall lapse and be returned to the treasury of the Commonwealth. Each appropriation shall be used for the intended purpose and where questions of intent arise subject to the provisions of KRS 45.750 and 45.800 in the case of capital construction projects and major items of equipment as defined by these sections, the decision of the Secretary of the Finance and Administration Cabinet, based upon budget work

papers, shall be final.

Section 4. State general funds appropriated by the General Assembly for capital construction projects and equipment purchases as defined in KRS 45.750 through 45.800 shall not lapse at the end of a fiscal year. They shall be carried forward until the project is completed. Any such unexpended funds remaining after acceptance of the project as complete shall be returned to a surplus account of the capital construction fund for investment until appropriated and allotted as provided in KRS 45.750 through 45.800.

Section 5. Long-lived assets of the institution, including land, buildings, and capital equipment, shall be accounted for in the plant fund group.

Section 6. The president shall prepare such information as is necessary for the Board of Regents of Morehead State University to make an annual report of the financial activity to the Council on Higher Education. The report shall meet the requirements of the council's system of uniform financial reporting for institutions of higher education.

DR. WILLIAM R. SEATON, Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1989 at 9 a.m. at Morehead State University. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 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. Porter Dailey, Vice President for Administrative and Fiscal Services, Morehead State University, 201 Howell-McDowell AD Building, Morehead, Kentucky 40351.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Porter Dailey
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entities affected were: Morehead State University, Treasury Department, Division of Accounts, State Computer Services, vendors and others doing business with the University.
(a) Direct and indirect costs or savings to those affected:
1. First year: During the first year in which the University operated under the internally authorized regulation it greatly reduced the number of checks issued, the processing and filing of documents, the computer time involved in processing transactions, and the quantity of computer reports produced. The codification of the regulation will not result in any additional savings.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: The internal authorization of this regulation resulted in fewer layers of the decision-making process.
(2) Effects on the promulgating administrative body: The internal authorization of this regulation improved administrative functions through closer, on-site management which allows for greater control and flexibility.
(a) Direct and indirect costs or savings:
1. First year: The first year of internal authorization of this regulation resulted in more rapid processing of transactions with less paper work. The actual codification of the regulation will not affect costs or savings.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The internal authorization of this regulation resulted in a significant decrease in the paperwork processed in Frankfort with increased accountability at the university level.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.
(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:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the University for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

MOREHEAD STATE UNIVERSITY
Board of Regents

755 KAR 1:020. Annual audit.

RELATES TO: KRS 164A.570
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of each public institution of higher education to elect to perform financial management functions per KRS 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.570 at Morehead State University.

Section 1. Upon recommendation of the president based upon appropriate procurement procedure, the Board of Regents of Morehead State University shall engage a qualified firm of certified public accountants experienced in the auditing of institutions to conduct an annual examination of the institution's financial statements in accordance with generally accepted auditing standards for the purpose of submitting an independent opinion, and preparing a report of findings and recommendations concerning internal accounting controls and procedures, and compliance with KRS 164A.555 to 164A.630. The Secretary of the Finance and Administration Cabinet may prescribe the minimum scope of any such audit. The opinion, with the findings and recommendations, shall be forwarded to the governor, the Secretary of the Finance and Administration Cabinet, the Auditor of Public Accounts, the Director of the Legislative Research Commission, the Executive Director of the Council on Higher Education, and members of the Board of Regents.

DR. WILLIAM R. SEATON, Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1989 at 9 a.m. at Morehead State University. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 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. Porter Dailey, Vice President for Administrative and Fiscal Services, Morehead State University, 201 Howell-McDowell AD Building, Morehead, Kentucky 40351.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Porter Dailey
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entities affected were: Morehead State University, Finance and Administration Cabinet, and Auditor of Public Accounts.
(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: Filing copies of the audit reports.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The internal authorization of this regulation resulted in no significant increase in the cost of the audit for compliance testing. The actual codification of the regulation will not affect costs or savings.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Filing copies of the audit reports.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives as an audit is required by statute, outstanding bond issue trust indentures, and other governing documents with regulations.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the University for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

MOREHEAD STATE UNIVERSITY
Board of Regents

755 KAR 1:030. Purchasing; inventories; sales of surplus property; bidding procedures.

RELATES TO: KRS 164A.560
STATUTORY AUTHORITY: KRS 164A.575
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.575 at Morehead State University.

Section 1. The President of Morehead State University, on behalf of the Board of Regents, is authorized to purchase interest in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services, in accord with procedures based upon the principles of KRS Chapter 45A, except that competitive bids may not be required for:
(1) Contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services;
(2) Food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies;
(3) Instructional materials available from only one (1) source;
(4) Where rates are fixed by law or ordinance;

(5) Library books;
(6) Commercial items that are purchased for resale;
(7) Professional, technical, scientific or artistic services, but contracts shall be submitted in accordance with KRS 45.700 and 45.720;
(8) All other commodities, equipment and services which, in the reasonable discretion of the Board, are available from only one (1) source; and
(9) Interests in real property.

Section 2. The President of Morehead State University, on behalf of the Board of Regents, is authorized to negotiate with vendors who maintain a general service administration price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Service Administration and the vendor affected.

Section 3. The President of Morehead State University shall direct the appropriate institutional officers to take and maintain inventories of plant and equipment.

Section 4. The President of Morehead State University shall establish procedures to identify items of common general usage among all departments to foster volume purchasing, and shall establish and enforce schedules for purchasing supplies, materials, and equipment.

Section 5. The President of Morehead State University shall have power, on behalf of the Board of Regents, to salvage, to exchange, and to condemn supplies, equipment, and real property.

Section 6. Upon the approval of the Secretary of the Finance and Administration Cabinet and the Board of Regents, the president may purchase or otherwise acquire, on behalf of the Board of Regents, all real property determined to be needed for the institution's use. The amount paid shall not exceed the appraised value as determined by a qualified appraiser or the value set by the eminent domain procedure.

Section 7. The Board of Regents of Morehead State University, acting through the president, shall sell or otherwise dispose of all real or personal property of the institution which is not needed or has become unsuitable for public use, or would be more suitable consistent with the public interest for some other use, as determined by the Board. The determination of the Board shall be set forth in an order, and shall be reached only after review of a written request by the institution desiring to dispose of the property. Such request shall describe the property and state the reasons why the institution believes disposal should be effected. All instruments required by law to be recorded which convey any interest in any such real property so disposed of shall be executed and signed by the appropriate officer of the Board. Unless the Board deems it in the best interest of the university to proceed otherwise, all such real or personal property shall be sold either by invitation of sealed bids or by public auction, provided, however, that the selling price of any interest in real property shall not be less than the appraised value thereof as determined by the Finance and Administration Cabinet or the Transportation Cabinet for such requirements of that cabinet.

Section 8. Real property or any interest therein may, subject to the provisions of KRS Chapter 45A, be purchased, leased, or otherwise acquired from any officer or employee of any board of the university, based upon a written application by the grantor or leasor approved by the Board, that the employee has not either himself or through any other person influenced or attempted to influence the board requesting the purchase of the property. In any case in which such an acquisition is consummated, the said request and finding shall be recorded and kept by the Secretary of State along with the other documents recorded pursuant to the provisions of KRS Chapter 56.

Section 9. The Board of Regents shall attempt in every practicable way to insure the university's supplying its real needs at the lowest possible cost. To accomplish this the Board authorizes the president, on its behalf, to enter into cooperative agreements with other public or private institutions of education or health care.

Section 10. The president, on behalf of the Board of Regents, shall have control and supervision over all purchases of energy-consuming equipment, supplies and related equipment purchased or acquired by the university. All energy-consuming items will be purchased so as to promote energy conservation and acquisition of energy-efficient products; this is to be accomplished by having the Director of Physical Plant review all such purchases in terms of energy conservation plans of the university and advise the president or his purchasing delegate accordingly.

Section 11. The president is authorized on behalf of the Board of Regents to negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency must be fully explained, in writing, by the Vice President for Administrative and Fiscal Services and such explanation must be approved by the university president. The letter and approval shall be filed with the record of all such purchases. Where practical, standard specifications shall be followed in making emergency purchases. A good faith effort shall be made to effect a competitively-established price for emergency purchase.

DR. WILLIAM R. SEATON, Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1989 at 9 a.m. at Morehead State University. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 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. Porter Dailey, Vice President for Administrative and Fiscal Services, Morehead State University, 201 Howell-McDowell AD Building, Morehead, Kentucky 40351.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Porter Dailey
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entity affected besides the University was the State Purchasing Office.
(a) Direct and indirect costs or savings to those affected:
1. First year: During the first year in which the University operated under the internally authorized regulation it greatly reduced the number of checks issued, the processing and filing of documents, the computer time involved in processing transactions, and the quantity of computer reports produced. This reduction of the processing time of transactions facilitated the required payment of the vendors' invoices within thirty days of receipt (KRS 45.453). The codification of the regulation will not result in any additional costs or savings.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The internal authorization of this regulation improved administrative functions through closer, on-site management which allowed for greater control and flexibility.
2. Continuing costs or savings: Same as above.
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:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the University for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

MOREHEAD STATE UNIVERSITY
Board of Regents

755 KAR 1:040. Disposal of property proceeds; title.

RELATES TO: KRS 164.410
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164.410 at Morehead State University.

Section 1. The Board of Regents of Morehead State University shall periodically review the assets of the university and shall sell and convey those assets not necessary for implementing the institutional mission. Proceeds from the disposition shall be deposited in the unexpended plant fund account or in the fund for excellence authorized by KRS 164A.620.

Section 2. Any real property acquired by the Board of Regents of Morehead State University pursuant to KRS 164.410 shall be in the name of the Commonwealth of Kentucky for the use and benefit of Morehead State University.

DR. WILLIAM R. SEATON, Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1989 at 9 a.m. at Morehead State University. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 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. Porter Dailey, Vice President for Administrative and Fiscal Services, Morehead State University, 201 Howell-McDowell AD Building, Morehead, Kentucky 40351.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Porter Dailey
(1) Type and number of entities affected: Since the university internally enacted this

regulation in 1982 and given that the purpose of this regulation is only to codify the elective provision of KRS Chapter 164A, there are no new entities which will be affected. The original entity affected besides the University was Surplus Property.

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

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(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:

(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the University for the purpose of increasing efficiency and accountability.

TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

MOREHEAD STATE UNIVERSITY
Board of Regents

755 KAR 1:050. Issuance of bonds.

RELATES TO: KRS 164A.605

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.605 at Morehead State University.

Section 1. Subject to the provisions of KRS 45.750 to 45.800 and KRS 56.870 to 56.874, the Board of Regents of Morehead State University may issue, under the provisions of KRS 162.340 to 162.380, consolidated educational building revenue bonds, housing bonds, or bond anticipation notes. The president, on behalf of the Board of Regents of Morehead State University, shall submit to the State Property and Buildings Commission a request for approval of the project before any financial commitment of any sort may be made in connection therewith, including employment of architects, engineers, fiscal agents or attorneys. Personal service contracts for fiscal agents and bond counsel shall be subject to KRS 45.700 to 45.720. After approval by the commission, the Board of Regents of Morehead State University, upon recommendation of the president, shall appoint fiscal agents, and bond counsel as may be required to make financial arrangements for the project. The date of sale on such issues shall be coordinated with the Finance and Administration Cabinet to avoid a conflict with other state bond issues.

DR. WILLIAM R. SEATON, Chairman

APPROVED BY AGENCY: November 15, 1989

FILED WITH LRC: November 15, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1989 at 9 a.m. at Morehead State University. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 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. Porter Dailey, Vice President for Administrative and Fiscal Services, Morehead State University, 201 Howell-McDowell AD Building, Morehead, Kentucky 40351.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Porter Dailey

(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entities affected were: Morehead State University, State Property and Building Commission, and Finance and Administration Cabinet.

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

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The codification of this regulation will not change the authorized internal regulation in effect requiring approval of the State Property and Building Commission and the Board of Regents.

(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: The codification of this regulation will not change the authorized internal regulation in effect requiring approval of the State Property and Building Commission and the Board of Regents.
(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:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the University for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

MOREHEAD STATE UNIVERSITY
Board of Regents

755 KAR 1:060. Delegation of financial management responsibility.

RELATES TO: KRS 164A.560
STATUTORY AUTHORITY: KRS 164A.555 to 164A.605
NECESSITY AND FUNCTION: KRS 164A.560(1) permits governing boards of each public institution of higher education which has elected by regulation to implement the financial management functions authorized by KRS 164A.555 to 164A.630 to delegate those responsibilities by regulation to appropriate officials of the university. This regulation provides for such delegations.

Section 1. The Board of Regents of Morehead State University authorizes the president, by formal, written assignment, to delegate any portion of his authority to the Vice President for Administrative and Fiscal Services, except as provided in Section 4 of this regulation.

Section 2. Morehead State University officials, to whom the president has delegated certain financial management responsibilities pursuant to this regulation, are authorized to subdelegate those responsibilities or any portion thereof to their deputies and subordinates to the extent authorized by the president. All such subdelegations shall be made in writing and reported to the president.

Section 3. Any Morehead State University official with authority derived from a delegation or subdelegation under this regulation shall furnish a copy of his delegation or subdelegation upon request of any vendor or member of the public. All such delegations or subdelegations are terminated immediately upon suspension of the individual's employment at the university.

Section 4. No official, including the president, is authorized by Morehead State University Board of Regents to acquire or dispose of an interest in real property, the duration of which interest exceeds two (2) years time, without action of the Board of Regents.

DR. WILLIAM R. SEATON, Chairman
APPROVED BY AGENCY: November 15, 1989
FILED WITH LRC: November 15, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1989 at 9 a.m. at Morehead State University. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 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. Porter Dailey, Vice President for Administrative and Fiscal Services, Morehead State University, 201 Howell-McDowell AD Building, Morehead, Kentucky 40351.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Porter Dailey
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. In addition, the only entity originally affected was the University.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The codification of this regulation will not change the internally authorized regulation requiring the official delegation of authority.
(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:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the University for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal

815 KAR 10:030. Administration and enforcement of the Kentucky Standards of Safety (Fire Prevention Code).

RELATES TO: KRS Chapters 198B and 227
STATUTORY AUTHORITY: KRS 227.300
NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.300 to establish reasonable regulations based upon good engineering practice and principles providing a reasonable degree of safety for human life against the emergencies of fire and panic, and insuring, as far as practicable, against fire loss. Such regulations shall constitute the fire prevention code for Kentucky which shall be known as the Kentucky Standards of Safety. They shall also be used to supplement the Kentucky Building Code, where applicable. This regulation is necessary to establish additional administration and enforcement provisions necessary to implement the standards adopted in 815 KAR 10:035. These standards of safety are enforceable by the State Fire Marshal, pursuant to KRS Chapter 227 and local authorities pursuant to KRS 227.320, and they establish minimum requirements for the matters covered herein.

Section 1. Definitions. Definitions in this section shall apply to this regulation and shall be incorporated into Article 2, Section 201 of the Kentucky Standards of Safety.
(1) "Alternate" or "alternative" means a system, condition, arrangement, materials or equipment submitted to or accepted by the State Fire Marshal or other fire code official as a substitute for a code requirement.
(2) "Fire prevention code" means the BOCA National Fire Prevention Code, 1987 edition, as adopted by the Commissioner of the Department of Housing, Buildings and Construction in 815 KAR 10:035.
(3) "Fire chief" means the authorized head of a fire department that is recognized by the State Fire Marshal's Office.
(4) "Fire department" means a fire department recognized by the State Fire Marshal's Office.
(5) "Fire code official" means the State Fire Marshal or other enforcement officer designated by the appointing authority of a local governmental jurisdiction for the enforcement of this regulation and the codes and standards adopted herein.
(6) "Fire suppression system" means a fixed system of approved appliances/devices, valves and piping designed and installed to control/suppress fire either by means of manual or automatic activation.
(7) "Floor loading" means forces or other actions that arise on structural systems from the weight of all permanent construction, occupants and their possessions including:
(a) "Dead load" the weight of all permanent structural and nonstructural components of a building, such as walls, floors, roofs, ceilings, stairways and fixed service equipment.
(b) "Live load" the weight superimposed by the use and occupancy of the building, not including the wind load, earthquake load, or dead load.
(8) "Historic building" means an existing building or structure identified and classified as historic property by the Kentucky Heritage Commission or the National Register of Historic Places.
(9) "Process" means the manufacturing, handling, blending, conversion, purification, recovery, separation, synthesis or use, or any combination of any commodity or material regulated by this code.
(10) "State Fire Marshal" means the administrative head of the Division of Fire Prevention, Department of Housing, Buildings and Construction, Commonwealth of Kentucky, and signified by the abbreviation, "SFM".

Section 2. Title and Scope. (1) The provisions of this regulation shall supersede any conflicting provisions of any code adopted by reference herein.
(2) This regulation contains administrative and enforcement provisions, in addition to those required by KRS Chapter 227, describing the method and level of regulatory enforcement by the State Fire Marshal and other fire code officials for the "Kentucky Standards of Safety" and shall apply to all buildings, statutes, uses, processes and conditions, materials and equipment as set forth in this regulation and 815 KAR 10:035.
(3) New construction, additions and alterations and changes of use group within the scope of the Kentucky Building Code shall be governed under the building code and regulated by the building official of the jurisdiction.

Section 3. Intent of Code. Where the purpose of any provision of the "Kentucky Standards of Safety" as it pertains to safety of life and property from fire can be fulfilled by other means, the fire code official in his enforcement of these codes may permit certain specific alternatives as set forth in this regulation, if he finds the approved changes, repairs, improvements or actions render the property reasonably safe.

Section 4. Continued Use. The legal use and occupancy of any building or structure may be continued without change, except as may be provided otherwise by this regulation or as may be legally provided for by any applicable state or local law, ordinance, rule, regulation, code, or standard.

Section 5. Change in Use. (1) A total change in the use or occupancy of an existing building, structure or facility which would cause a greater hazard to the public shall not be made unless such building or structure is made to comply with the standards applicable for the new use or occupancy. The compliance alternative provisions of this regulation may be utilized by the fire code official where total or strict compliance with applicable standards governing the new use is not practical. Any proposed new construction in connection with the proposed changes of use shall be approved by the building code official and comply with the Kentucky Building Code.

(3) When the proposed new use is of equal or lesser hazard as determined by the fire code official and no new construction is involved, further compliance with any code for new construction is not required by this regulation. Alterations or repairs to an existing building or structure which do not adversely affect the performance of the building may be made with like materials. Any proposed change to the existing building or change in type of contents of the existing building shall not increase the fire hazard to adjacent buildings or structures. If the fire hazard to adjacent buildings or structures is increased, then fire safety code requirements for exterior walls shall apply.

Section 6. Change in Use of a Portion of a Building. (1) If a portion of a building is changed to a new use or occupancy and that portion is separated from the remainder of the building with vertical or horizontal fire separations complying with applicable building code requirements or with applicable fire code requirements, then the portion changed shall be made to comply with the applicable requirements for the new use or occupancy to the extent noted in Section 5 of this regulation.

(2) If a portion of the building is changed to a new use or occupancy and that portion is not separated from the remainder of the building as noted in subsection (1) of this section, then the provisions of the applicable standards applying to each use or occupancy of the building shall apply to the entire building to the extent noted in Section 5 of this regulation; provided, however, if there are conflicting provisions in requirements for the various uses or occupancies, the fire code official shall apply the strictest requirements.

Section 7. Increased Floor Loading. If a proposed change in the use or occupancy of an existing building or portion thereof substantially increases the floor loading, the fire code official may require an investigation by a Kentucky registered professional engineer to determine the adequacy of the existing floor system to support the increased loads. If the existing floor system is found to be inadequate, it shall be modified to support the increased loads or the proposed allowable floor loading shall be reduced by and posted by the appropriate enforcement authority.

Section 8. Hazardous Conditions. With reference to existing buildings, wherever the fire code official identifies any of the following conditions or defects he shall order the defect or condition to be corrected:

(1) Structural. Any building or structure or portion thereof which is in imminent danger of fire or collapse because of but not limited to the following factors:

(a) Dilapidation, deterioration, or decay;

(b) Faulty structural design or construction;

(c) The removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; or

(d) The deterioration, decay, or inadequacy of the foundation;

(2) Number of exits. Less than two (2) approved independent, remote, and properly protected exit ways serving every story of a building, except where a single exit way is permitted by the Kentucky Standards of Safety or the Kentucky Building Code;

(3) Capacity of exits. Any required door, aisle, passageway, stairway, or other required means of egress which is not of sufficient capacity to provide for the population of the portions of the building served and which is not so arranged as to provide safe and adequate means of egress to a place of safety;

(4) Mechanical systems. Utilities and mechanical systems not in conformance with the codes in effect at the time of construction of a building which create a serious threat of fire or threaten the safety of the occupants of the building.

Section 9. Compliance Alternatives. This section shall constitute Section F-101.5 of the Kentucky Standards of Safety and shall constitute generally acceptable compliance alternatives illustrating principles which may be utilized by the fire code official for specific conditions violating the fire prevention code. These alternatives will alleviate problems of unreasonable costs in correcting existing hazards, and will make the code more practical and enforceable in existing structures, while maintaining a high degree of life safety. The purpose of compliance alternatives is to provide equal safety by overcompensating on one (1) requirement to balance the failure to meet another requirement. It is recognized, for purposes of this regulation, that all building systems interact with each other; therefore, any consideration of compliance alternatives should take into account all existing and proposed conditions to determine their original or continued acceptability. The compliance alternatives are not all-inclusive and do not preclude consideration and approval of other alternatives by any enforcement authority. If the fire code official finds that particular compliance alternative(s) afford a substantially equivalent margin of safety, he may accept the following alternative(s):

(1) Inadequate number of exits:

(a) Provide connective fire-exit balconies, acceptable to the enforcement authority, between buildings;

(b) Provide alternate exit or egress facilities leading to safety outside the building or to a place of safe refuge in the building or an adjoining building, acceptable to the enforcement authority;

(c) Provide an exterior fire escape(s), acceptable to the enforcement authority, where the providing of enclosed interior or enclosed exterior stairs is not practical; or

(d) Install early fire warning or fire suppression system.

(2) Excessive travel distances to exits:
(a) Install an approved smoke detection system throughout the building;
(b) Install an approved complete automatic fire suppression system;
(c) Subdivide the exit travel route with smoke barriers acceptable to the enforcement authority;
(d) Increase the fire resistance rating of corridor walls and doors; or
(e) Provide additional approved means of escape.
(3) Unenclosed or improperly enclosed exit stairs:
(a) Improve enclosure or exit stairway;
(b) Add a partial fire suppression system;
(c) Add a sprinkler draft curtain; or
(d) Add a smoke detection system.
(4) Inadequate fire separation walls or smoke barriers shall be as set forth in subsection (3)(c) of this section.
(5) Lack of protection of openings in exterior walls:
(a) Improve fire resistance or existing openings and protect them with fire-rated windows or doors as appropriate;
(b) Seal the openings with fire-rated construction, as approved by the enforcement authority; or
(c) Install an approved fire suppression system.

Section 10. Kentucky Licensed Facilities. State prisons, day care centers, hospitals, nursing homes and other facilities required to be licensed by the Kentucky Cabinet for Human Resources are not required to comply with the provisions of the fire prevention code if they are inspected and approved in accordance with applicable edition or editions of the Life Safety Code.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 9, 1989
FILED WITH LRC: November 13, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on December 21, 1989 at 1 p.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. 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: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by December 16, 1989, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: Existing commercial, public buildings and multifamily dwellings.
(a) Direct and indirect costs or savings to those affected: The regulation will result in costs of making fire safety alterations to buildings but only if a hazard exists in the facility.
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: Regular inspection reports, hearings, etc., as have been carried on for many years. No new costs.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No increased costs are involved because staff will provide similar inspections.
1. First year: The cost of publication of the new book will be offset by the price for which it is sold.
2. Continuing costs or savings: More efficient than previous codes because they are designed to interact with requirements of the KBC.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No change in paperwork requirements through the citations for violations, computer adjustments, etc.
(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on local revenue except a potential for permits if they so choose.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Adoption of National Fire Codes was rejected in favor of use of BOCA National Fire Code with fire codes referenced in Appendix. Consistency with KBC important.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS Chapter 198B and uniform standard building code.
(a) Necessity of proposed regulation if in conflict: Need appropriate up-to-date minimum standards to require fire safety in both old buildings and maintenance of fire safety in buildings constructed under the KBC.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Article 1 of the KY Standards of Safety and the KBC are harmonized to avoid conflict. It allows the building official to refer to Standards of Safety if necessary and lets fire official enforce code where it was never approved when built. SFM enforcement powers include the ability to help enforce all laws relating to fire safety.
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Intended to affect local government to the extent that every local government is supposed to adopt and enforce the standards of safety, pursuant to KRS 227.320.
3. State the aspect or service of local

government to which this administrative regulation relates. Fire safety inspections, reporting and enforcement.

4. How does this administrative regulation affect the local government or any service it provides? Merely provides appropriate standards for use statewide by each local government.

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal

815 KAR 10:035. Kentucky Standards of Safety.

RELATES TO: KRS Chapters 198B and 227
STATUTORY AUTHORITY: KRS 227.300
NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.300 to establish reasonable regulations based upon good engineering practice and principles providing a reasonable degree of safety for human life against the emergencies of fire and panic and insuring, as far as practicable, against fire loss. Such regulations shall constitute the fire prevention code for Kentucky which shall be known as the Kentucky Standards of Safety. This regulation is necessary to establish minimum safety standards which are enforceable by the State Fire Marshal, pursuant to KRS Chapter 227 and by local authorities pursuant to KRS 227.320. This regulation includes the substance of 815 KAR 10:020, which is being repealed.

Section 1. Definitions. Definitions in this section shall apply to this regulation and shall be incorporated into Article 2, Section 201 of the Kentucky Standards of Safety.

(1) "Alternate" or "alternative" means a system, condition, arrangement, materials or equipment submitted to or accepted by the State Fire Marshal or other fire code official as a substitute for a code requirement.

(2) "Code official" see "Fire code official".

(3) "Combustible" means capable of burning or producing flame at ordinary temperatures or being easily ignited.

(4) "Common path of travel" means that portion of exit access that must be traversed before two (2) separate and distinct paths of travel to two (2) exits are available. Paths that merge are common paths of travel. Common path of travel is measured in the same manner as travel distance but terminates at that point where two (2) separate and distinct routes become available.

(5) "Distinct hazard" means any situation, process, material or condition which is likely to cause a fire or explosion or provide a ready fuel supply to augment the spread or intensity of the fire or explosion which poses a threat to life or the property of others, and including any condition likely to result in collapse of some portion of the structure in case of such fire or explosion or other impending disaster that may be a threat to life or property.

(6) "Dwelling or private dwelling" means a single unit providing complete and independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

(7) "Fire prevention code" means the BOCA National Fire Prevention Code, 1987 edition, as adopted by the Commissioner of the Department of Housing, Buildings and Construction in this regulation.

(8) "Fire chief" means the authorized head of a fire department that is recognized by the State Fire Marshal's Office.

(9) "Fire department" means a fire department recognized by the State Fire Marshal's Office.

(10) "Fire code official" means the State Fire Marshal or other enforcement officer designated by the appointing authority of a local governmental jurisdiction for the enforcement of this regulation and the codes and standards adopted herein. (See "Code official".)

(11) "Fire suppression system" means a fixed system of approved appliances/devices, valves and piping designed and installed to control/suppress fire either by means of manual or automatic activation.

(12) "Fire suppression system inspector" means any individual having met the minimum requirements adopted by the Office of the State Fire Marshal.

(13) "Floor loading" means forces or other actions that arise on structural systems from the weight of all permanent construction, occupants and their possessions including:

(a) "Dead load" the weight of all permanent structural and nonstructural components of a building, such as walls, floors, roofs, ceilings, stairways and fixed service equipment.

(b) "Live load" the weight superimposed by the use and occupancy of the building, not including the wind load, earthquake load, or dead load.

(14) "Kentucky fire incident report" means a form for the reporting of fires which is obtained pursuant to KRS 304.13-380 from the State Fire Marshal for use by fire departments.

(15) "Historic building" means an existing building or structure identified and classified as historic property by the Kentucky Heritage Commission or the National Register of Historical Places.

(16) "LED" means level of exit discharge.

(17) "NFiPA" means the National Fire Protection Association.

(18) "Occupancy classification" means the type of use groups consistent with classification set forth in Section 5 of this regulation.

(19) "Process" means the manufacturing, handling, blending, conversion, purification, recovery, separation, synthesis or use, or any combination of any commodity or material regulated by this code.

(20) "Single family dwelling" means one (1) unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which is not connected to any other unit or building.

(21) "State Fire Marshal" means the administrative head of the Division of Fire Prevention, Department of Housing, Buildings and Construction, Commonwealth of Kentucky, and signified by the abbreviation, "SFM".

(22) "Smoking" means a lighting, igniting, holding or possessing any lighted cigar, cigarette or pipe.

(23) "Unfriendly fire" means a fire that is deliberately set (arson) or ignites through carelessness, negligence, or other cause in such a manner as to endanger the safety of any person or property.

Section 2. Adoption of Fire Prevention Code. The BOCA National Fire Prevention Code/1987, 7th Edition, published by and copies available from

Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477, is hereby incorporated by reference as it is set forth at length in this regulation, with specific changes set forth in Sections 3 through 15 of this regulation. This fire prevention code establishes minimum requirements for all matters covered herein and it shall be known as the Kentucky Standards of Safety. Copies are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

Section 3. Article 1. (1) The provisions of 815 KAR 10:030, Administration and enforcement, are hereby incorporated by reference and shall be cited in Article 1 under Sections F-100 through F-101.

(2) Create a new subsection to read as follows: "F-103.7 The State Fire Marshal shall not become involved in the local permit process described in Sections F-103.1 - F-103.6a; and where local permits are required, the State Fire Marshal shall not perform any related inspections. Exception: Permits required by law to be issued by the State Fire Marshal, shall be issued according to state statute or regulations and inspected accordingly."

(3) Amend Subsection F-104.1 to read as follows:

(a) "Local Appeals. Any party aggrieved by a decision of the local fire code official and any local fire code official desiring a ruling, may appeal to the local appeals body as provided by local ordinance."

(b) "State Fire Marshal Appeals. Appeals from decisions of the State Fire Marshal or by his authority, pursuant to KRS Chapter 227, shall be made in accordance with the provisions of KRS Chapter 227."

(4) Delete Subsections F-104.2 through F-104.7 in their entirety.

Section 4. Article 2. Create a new Section, F-202 and subsections F-202.1 through F-202.12 which shall be entitled, "Use Group Classification" and which shall read as follows:

(1) "F-202.1 General: All buildings and structures shall be classified with respect to use in one (1) of the use groups listed in Table 202 below.

TABLE 202

1.	Use Group A	assembly (See Section F-202.2)
2.	Use Group B	business (See Section F-202.3)
3.	Use Group E	educational (See Section F-202.4)
4.	Use Group F	factory and industrial (See Section F-202.5)
5.	Use Group H	high hazard (See Section F-202.6)
6.	Use Group I	institutional (See Section F-202.7)
7.	Use Group M	mercantile (See Section F-202.8)
8.	Use Group R	residential (See Section F-202.9)
9.	Use Group S	storage (See Section F-202.10)
10.	Use Group U	utility and miscellaneous (See Section F-202.11)"

(2) "F-202.2 USE GROUP A, ASSEMBLY USES:"

(a) "202.2.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group A which are used or designed for the gathering together of persons for purposes such as civic, social or religious functions, recreation, food or drink consumption or awaiting transportation. Exception: Assembly type uses with a total occupant load of less than fifty (50) shall be classified as Use Group B (Business)."

(b) "202.2.2 Use Group A-1, theaters: This use group shall include all theaters and all other buildings and structures, or parts thereof, intended for the production and viewing of the performing arts or motion pictures and usually provided with fixed seats, including theaters, motion picture theaters and television and radio studios admitting an audience. Stages and platforms shall comply with the applicable provisions of the Kentucky Building Code."

(c) "F-202.2.3 Use Group A-2 structures: This use group shall include all buildings and places of public assembly, without theatrical stage accessories, designed for use as dance halls, night clubs and for similar purposes, including all rooms, lobbies and other spaces connected thereto with a common means of egress and entrance."

(d) F-202.2.4 Use Group A-3 structures: This use group shall include all buildings with or without an auditorium in which persons assemble for amusement, entertainment or recreation, and incidental motion picture, dramatic or theatrical presentations, lectures or other similar purposes without theatrical stage other than a raised platform; and principally used without permanent seating facilities, including art galleries, exhibition halls, museums, lecture halls, libraries, restaurants other than night clubs, and recreation centers; and buildings designed for other similar assembly purposes including passenger terminals."

(e) "F-202.2.5 Use Group A-4 structures: This use group shall include all buildings used as churches and for similar religious purposes."

(f) "F-202.2.6 Use Group A-5, outdoor assembly: This use group shall include structures used for outdoor assembly intended for participation in or reviewing activities including grandstands, bleachers, coliseums, stadiums, amusement park structures and fair or carnival structures. Such structures shall comply with the provisions of the building code listed in Appendix A for special uses and occupancies."

(3) "F-202.3 USE GROUP B, BUSINESS USES: F-202.3.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group B which are used for the transaction of business, for the rendering of professional services, or for other special services that involve stocks of goods, wares or merchandise in limited quantities for use incidental to office uses or sample purposes."

(4) "F-202.4 USE GROUP E, EDUCATIONAL USES. F-202.4.1 General: All buildings and structures, or parts thereof, other than those used for business training or vocational training, shall be classified in Use Group E which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities. Educational type uses with a total occupant load less than fifty (50) shall be classified in Use

Group B. School buildings, or parts thereof, for business training or vocational training shall be classified in the same use group as the business or vocation taught."

(5) "F-202.5 USE GROUP F, FACTORY AND INDUSTRIAL USES."

(a) "202.5.1 General: All buildings and structures, or parts thereof, in which occupants are engaged in performing work or labor in the fabricating, assembling or processing of products or materials shall be classified in Use Group F, including, among others, factories, assembly plants, industrial laboratories and all other industrial and manufacturing uses, except those of Use Group H involving highly combustible, flammable or explosive products and materials."

(b) "202.5.2 Use Group F-1 structures: Factory and industrial use which are not otherwise classified as low hazard Use Group F-2, shall be classified as moderate hazard factory and industrial, Use Group F-1."

(c) "202.5.3 Use Group F-2 structures: Factory and industrial uses which involve the fabrication or manufacturing of noncombustible materials which during finishing, packing or processing do not involve a significant fire hazard shall be classified as Use Group F-2."

(6) "F-202.6 USE GROUP H, HIGH HAZARD USES."

(a) "202.6.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group H which are used for the manufacturing, processing, generation or storage of corrosive, highly toxic, highly combustible, flammable or explosive materials that constitute a high fire or explosion hazard, including loose combustible fibers, dust and unstable materials."

(b) "202.6.2 Exceptions: The following shall not be classified as Use Group H:

1. Any building or portion of a building containing less than the exempt amount of those materials shown in Table 202.6 when maintained in accordance with this code.
2. Buildings containing rooms conforming to the requirements of Article 6 of the building code listed in Appendix A.
3. Rooms containing flammable liquids in tightly-closed containers of one (1) gallon (0.0038 m^3) capacity or less for retail sale or private use on the premises and in quantities not exceeding two (2) gallons per square foot (0.082 m^3/m^2) of room area.
4. Rooms used for preparation or storage of food products for retail sale on the premises.
5. Retail paint salesrooms with quantities of paint not exceeding two (2) gallons per square foot (0.082 m^3/m^2) of room area.
6. Liquor stores and distributors without bulk storage.
7. The storage or use of materials for agricultural purposes for use on the premises.
8. Closed systems housing flammable or combustible liquids or gases used for the operations or machinery or equipment.
9. Cleaning establishments which utilize combustible liquid solvents having a flash point of 140 degrees F. (60 degrees C.) or higher in closed systems employing equipment listed by an approved testing laboratory, provided this use is separated from all other areas of the building by one (1) hour fire-resistance rated construction.
10. Cleaning establishments which utilize a liquid solvent having a flash point at or above 200 degrees F. (93 degrees C.).
11. Refrigeration systems.
12. Tire retail stores without bulk storage."

(c) The following table shall apply to this section:

"TABLE 202.6
EXEMPT AMOUNTS OF HAZARDOUS MATERIALS, LIQUIDS AND CHEMICALS

Material	Maximum quantities[e]
1. Flammable Liquids	
Class 1-A	30 gal.[b]
Class 1-B	60 gal.[b]
Class 1-C	90 gal.[b]
2. Combustible liquids[c]	
Class II	120 gal.[b]
Class III-A	250 gal.[b]
3. Combination flammable liquids[a]	120 gal.[b]
4. Flammable gases	3,000 cu. ft. at one atmosphere of pressure at 70°F.
5. Liquefied flammable gases	60 gal.
6. Combustible fibers-loose	100 cu. ft.
7. Combustible fibers-baled	1,000 cu. ft.
8. Flammable solids	500 lbs.
9. Unstable material	No exemptions
10. Corrosive liquids	55 gal.
11. Oxidizing material-gases	6,000 cu. ft.
12. Oxidizing material-liquids	50 gal.
13. Oxidizing material-solids	500 lbs.
14. Organic peroxides	10 lbs.
15. Nitromethane (unstable materials)	No exemptions
16. Ammonium nitrate	1,000 lbs.
17. Ammonium nitrate compound mixtures containing more than 60% nitrate and poisonous gas	1,000 lbs.
18. Highly toxic material and poisonous gas	No exemptions
19. Smokeless powder	20 lbs.[d]
20. Black sporting powder	5 lbs.[d]

Note a. Containing not more than the exempt amounts of Class 1-A, 1-B or 1-C flammable liquids.

Note b. The maximum quantities shall be increased by 100 percent in areas which are not accessible to the public. In buildings where automatic fire suppression systems are installed, the maximum quantities shall be increased 100 percent in the areas accessible to the public.

Note c. Tank storage up to 660 gallons for fuel burning equipment meeting the requirements of the mechanical code in Appendix A shall be permitted.

Note d. Maximum quantities in the amount specified by NFiPA 495 shall be permitted when stored in accordance with NFiPA 495 listed in Appendix A.

Note e. 1 gallon = 0.00379 m^3, 1 cubic foot = 0.028 m^3, 1 pound = 0.454 kg."

(7) "F-202.7 USE GROUP I, INSTITUTIONAL USES."

(a) "F-202.7.1 Licensed institutional facilities shall conform to Section F-101.5."

(b) "F-202.7.2 Jails shall conform to the requirements of the Department of Corrections. State prisons shall conform to the requirements of the Life Safety Code, NFiPA 101."

(8) "F-202.8 USE GROUP M, MERCANTILE USES. F-202.8.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group M which are used for display and sales purposes involving stocks of goods, wares or merchandise incidental to such purposes and accessible to the public; including, among others, retail stores, motor fuel service stations, shops and salesrooms and markets. Highly combustible goods shall be limited to small quantities that do not constitute a high hazard; and if not so limited, the construction shall comply with the requirements for Use Group H as set forth in the provisions of the building code in appendix A."

(9) "F-202.9 USE GROUP R, RESIDENTIAL USES."

(a) "F-202.9.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group R in which families or households live, or in which sleeping accommodations are provided for individuals with or without dining facilities, excluding those that are classified as institutional buildings."

(b) "F-202.9.2 Use Group R-1 structures: This use group shall include all hotels, motels, boarding houses and similar buildings arranged for shelter and sleeping accommodations and in which the occupants are primarily transient in nature, making use of the facilities for a period of less than thirty (30) days."

(c) "F-202.9.3 Use Group R-2 structures: This use group shall include all multiple-family dwellings having more than two (2) dwelling units, except as provided in subsection (e) and shall also include all boarding houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature."

(d) "F-202.9.4 Dormitories: A dormitory facility which accommodates more than five (5) persons more than two and one-half (2 1/2) years of age shall be classified as Use Group R-2. Exception: Licensed facilities."

(e) "F-202.9.5 Use Group R-3 structures: This use group shall include all buildings arranged for the use of one (1) or two (2) family dwelling units including not more than five (5) lodgers or boarders per family. This definition shall apply to each unit located above or adjacent to another unit, so long as each building unit is completely separated from the others by walls and floor/ceiling assemblies of at least one (1) hour fire resistance rating and each unit has independent means of egress."

(f) "F-202.9.6 Use Group R-4 structures: This use group shall include all detached one (1) or two (2) family dwellings not more than three (3) stories in height, and their accessory structures as indicated in the One and Two Family Dwelling Code listed in Appendix A."

(10) "F-202.10 USE GROUP S, STORAGE USES."

(a) "F-202.10.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group S which are used primarily for the storage of goods, wares or merchandise, except those of Use Group H that involve highly combustible or explosive products or materials; including, among others, warehouses, storehouses and freight depots."

(b) "F-202.10.2 Moderate hazard uses: Buildings used for the storage of moderate hazard contents which are likely to burn with moderate rapidity, but which do not produce either poisonous gases, fumes or explosives, shall be classified in Use Group S-1."

(c) "F-202.10.3 Low hazard uses: Low hazard uses shall include buildings used for the storage of noncombustible materials, and of low hazard wares that do not ordinarily burn rapidly such as products on wood pallets or in paper cartons without significant amounts of combustible wrappings, but with a negligible amount of plastic trim such as knobs, handles or film wrapping. Such uses shall be classified as Use Group S-2."

(11) "F-202.11 USE GROUP U, UTILITY AND MISCELLANEOUS USES." "F-202.11.1 General: All buildings and structures of an accessory character and miscellaneous structures not classified in any specific use group shall be constructed, equipped and maintained to meet the requirements of this code commensurate with the fire and life hazard incidental to their use. Utility and miscellaneous uses shall include fences over six (6) feet (1829 mm) high, tanks, cooling towers, retaining walls and buildings such as private garages, carports, sheds and agricultural buildings."

(12) "F-202.12 Further identification on use group classification shall be found in the building code listed in Appendix A."

Section 5. Article 3. (1) Amend subsection F-302.1 to read as follows: "F-302.1 General: A person shall not deposit hot ashes or cinders, or smoldering coals, or greasy or oily substances susceptible to spontaneous ignition, into any combustible or place the same within ten (10) feet (3048 mm) of any combustible materials, except in metal or other noncombustible covered receptacles. Such receptacles, unless resting on a noncombustible floor or on the ground outside of the building, shall be placed on noncombustible stands and in every case shall be kept at least two (2) feet (610 mm) away from any combustible wall or partition, or exterior window or door opening."

(2) Amend subsection F-304 to read as follows: "F-304.1 Dumpsters: Dumpsters that are located adjacent to buildings for collection of trash and debris shall not be placed within ten (10) feet of a combustible portion of a building, including the eave of a roof. Exception: Where approved by the fire code official."

(3) Amend subsection F-305.1 to read as follows: "F-305.1 General: The storage of combustible or flammable material shall conform to the requirements of this code and NFiPA 30, 40, 231, 231C, 231D and 231F, as listed in Appendix A."

(4) Amend section F-306 as follows:

(a) Amend subsection F-306.1 to read as follows: "F-306.1 General: Combustible materials such as cotton batting, straw, dry vines, leaves, trees, artificial flowers or shrubbery and foam plastic materials shall not be used for decorative purposes in show windows or other parts of buildings in such a quantity to constitute a fire hazard, unless such materials shall first have been rendered flameproof."

(b) Amend subsection F-306.2.2 to read as follows: "F-306.2.2 Special effects: Any parade float utilizing special effects which are designed to create smoke, flame, heat or sparking conditions shall be approved by the local fire code official prior to utilization."

(c) Create a new subsection, F-306.4, to read as follows: "F-306.4 Furnishings or decorations of an explosive or highly combustible character shall not be used."

(5) Amend Section F-307 as follows:

(a) Amend subsection F-307.3 to read as follows: "F-307.3 Candles: The use of candles and open flame devices in places of assembly shall conform to the requirements of Subsections F-701.4 and F-701.5."

(b) Delete subsection F-307.3.1 in its entirety.

(6) Amend Section F-308 by amending paragraph 2 of subsection F-308.3 to read as follows: "2. Only trained persons shall operate the incinerator."

(7) Amend Section F-309 by amending paragraph 4 of subsection F-309.1 to read as follows: "4. Auxiliary cooking equipment that does not produce grease-laden vapor, including toasters, coffee makers, egg cookers and pizza ovens."

(8) Amend Section F-310 as follows:

(a) Amend subsection F-310.1 to read: "F-310.1 Commercial kitchen exhaust systems shall be cleaned at frequent intervals to remove deposits of residue and grease in the system whenever buildup of residue and grease is apparent."

(b) Delete subsection F-310.1.1 in its entirety.

(c) Create a new subsection, F-310.2, to read as follows: "F-310.2 Maintenance and inspection of commercial kitchen exhaust systems shall be in conformance to this section and Article 5."

(d) Create a new subsection, F-310.3, to read as follows: "F-310.3 Inspection: An inspection and servicing of the fire extinguishing system shall be made in accordance with F-507.2."

(e) Create a new subsection, "F-310.4 Cleaning", to read as follows:

1. "F-310.4.1 Flammable solvents or other flammable cleaning aids shall not be used."

2. "F-310.4.2 At the start of the cleaning process, electrical switches, detection devices and system components that may be accidentally activated shall be locked, pinned, protectively covered or sealed."

3. "F-310.4.3 Care shall be taken not to apply cleaning chemicals on fusible links or other detection devices of the automatic extinguishing system."

4. "F-310.4.4 When cleaning procedures are completed, all electrical switches, detection devices, and system components shall be returned to an operable state by qualified personnel. Cover plates shall be replaced and dampers and diffusers shall be positioned for proper air flow."

(9) Amend Section F-312 as follows:

(a) Amend subsection F-312.2 to read as follows: "F-312.2 Prohibited areas: Smoking shall be prohibited where conditions are such as to make smoking a hazard including areas of piers, wharves, warehouses, stores, industrial plants, institutions, schools, and in spaces where combustible materials are stored or handled. Smoking in places of assembly shall conform to Section 701.6."

(b) Amend subsection F-312.6 to read as follows: "F-312.6 Ashtrays: Where smoking is permitted, there shall be provided on each table and at other convenient locations noncombustible ashtrays or match receivers. Ashtrays shall be designed with deep grooves or snuffers that hold cigarettes securely. The sides shall be steep enough to force smokers to place cigarettes entirely within the ashtray. Commercial type ashtrays filled with sand or with closing lids shall be used where appropriate."

(10) Amend Section F-313 as follows:

(a) Amend subsection F-313.1 to read as follows: "F-313.1 Required access for fire apparatus. All premises which the fire department may be called upon to protect in case of fire and which are not readily accessible from public roads shall be provided with suitable gates, access roads, and fire lanes so that all buildings and water supplies on the premises are at all times accessible to fire apparatus. A written document, agreeable to the local fire marshal and for the benefit of the jurisdiction, shall be required for emergency access over all fire lanes. The designation, maintenance and marking of fire lanes on private property shall be accomplished as specified by the local fire code official. The designation, maintenance and marking of fire lanes on public ways shall be accomplished by the local jurisdiction on recommendation of the local fire code official. No person shall park a motor vehicle on, or otherwise obstruct, any fire lane and no person shall park a motor vehicle within ten (10) feet of a fire hydrant. Enforcement of designated fire lanes and fire hydrant clearance shall be the responsibility of the local police or other authority as determined by local ordinance of the jurisdiction within which the lanes and hydrants are located."

(b) Amend subsection F-313.2 to read as follows: "F-313.2 Vertical Clearance. All fire apparatus access roads shall have an unobstructed vertical clearance of not less than thirteen (13) feet six (6) inches. Exception: Upon approval, vertical clearance may be reduced, provided such reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance."

(11) Amend Subsection F-314.1 to read as follows: "F-314.1 Abatement of electrical hazards: When any electrical hazards are identified, such conditions shall be abated. All identified hazardous electrical conditions in permanent wiring shall be corrected in accordance with NFiPA 70 listed in Appendix A."

(12) Amend Section F-315 as follows:

(a) Amend subsection F-315.1 to read as follows: "F-315.1 Applicability. This section shall apply to portable equipment, either with or without wheels, used for heating tar, pitch, asphalt, or other similar substances for application on roofs, streets, floors, pipes, or other objects."

(b) Delete subsection F-315.1.1 in its entirety.

(c) Create a new subsection, F-315.5, to read as follows: "F-315.5 Certain Fuels Prohibited. No person shall use solid fuel or Class I flammable liquids as fuel for an asphalt (tar) kettle."

(d) Create a new subsection "F-315.6 Asphalt (Tar) Kettles in Transit" to read as follows:

1. "F-315.6.1 Open Flame. Open flame in an asphalt (tar) kettle while in transit is prohibited."

2. "F-315.6.2 Latching Devices. Kettle doors or lids shall be closed and secured while in transit."

3. "F-315.6.3 Asphalt (Tar) Kettles on Trucks. Kettles not equipped with wheels shall not be fired or used when mounted on a truck, except if the truck body is of all metal construction and the kettle is securely attached to the bed of the truck. Firing of small patch kettles while located in the bed of a truck is prohibited.

Tank trucks and trailers used for transportation of asphalt or similar substances shall be constructed and operated in accordance with the NFiPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids."

(13) Amend subsection F-316.2 to read as follows: "F-316.2 Permit required: When required by local legislation, a person shall not store, keep or have on hand more than twenty-five (25) pounds (11.35 kg) of nitrate film without securing a permit from the fire code official for such activity. A person shall not sell, lease or otherwise dispose of any nitrate film to any person not having a permit to handle, use or display such film."

(14) Amend subsection F-317.2 to read as follows: "F-317.2 Permit required: When required by local legislation, all retailers, jobbers and wholesalers storing or handling more than twenty-five (25) pounds (11.35 kg) of cellulose nitrate (phroxylin) plastics shall obtain a permit from the local fire code official. A permit shall also be obtained from the local fire code official for the manufacture of articles of cellulose nitrate (pyroxylin) plastics, including the use of cellulose nitrate (pyroxylin) plastics in the manufacture or assembling of other articles."

(15) Create a new Section, "F-318.0 Reporting Fires and Hazardous Substances" to read as follows:

(a) "F-318.1 Reporting Emergency Conditions. In the event of an unfriendly fire or accidental release of a hazardous gas, liquid or solid in any building or premises, the discoverer shall immediately spread an alarm to all occupants of the building or premises and to all persons who might be endangered by the fire or release and with all reasonable dispatch and diligence call or otherwise notify the fire department legally committed to serve the area."

(b) "F-318.1.1 In the event that an unfriendly fire occurs and is extinguished, the discoverer shall immediately notify the fire department legally committed to serve the area."

(c) "F-318.1.2 Where state or local legislation has been adopted specifying reportable quantities of hazardous materials released, such notification shall conform to the provisions of such legislation."

(d) "F-318.2 Notification of the State Fire Marshal. The Fire Chief or highest ranking officer shall immediately notify the Office of the State Fire Marshal upon becoming aware of any of the following:

1. A hazardous materials incident.
2. A fire or fire related fatality (including vehicles and single family dwellings).
3. A fire or fire related injury serious enough to become a fatality.
4. A fire involving structural damage in a regulated building, including:

a. All institutional, educational, state owned or state leased and high hazard occupancies.

b. All business, mercantile and industrial occupancies having a capacity over 100 persons.

c. All assembly occupancies, except churches, having a capacity over 100 persons.

d. Churches with a capacity over 400 persons and more than 6,000 square feet in floor area.

e. Any other building more than three (3) stories in height or 20,000 square feet of floor area."

(e) "F-318.3 Fire Department Operations at Emergencies. The fire code official conducting operations in connection with the extinguishment of any fire, or control of any explosion or other emergency situation shall have full power and authority to direct all operations for extinguishment or control and to take the necessary precautions to save life, protect property and prevent further injury or damage. In the pursuit of such operations, including the investigation of the cause of such emergency or the situation which required fire department notification, the fire code official may control or prohibit the approach to the scene of such emergency by any vehicle, vessel, thing or person."

(f) "F-318.3.1 No person shall obstruct the operations of the fire department in connection with the extinguishment of any fire, or the actions relative to other emergencies, or disobey any lawful command of the fire code official in charge of the emergency or any part thereof, or any lawful order of a police officer assisting the fire department."

Section 6. Article 4. (1) Create a new subsection F-400.4 to read as follows: "F-400.4 Compliance Alternatives. Compliance with Section F-101.4 or F-101.5 may be used by the fire code official to satisfy the intent of this Article as it relates to inadequate number of exits, excessive travel distances to exits, unenclosed or improperly enclosed exit stairs, inadequate fire separation or smoke barriers and lack of protection of openings in exterior walls."

(2) Amend section F-401 to read as follows:

(a) "F-401.1 Number of Means of Egress: Every floor area of all occupancy types shall be provided the minimum number of approved, remote means of egress based on the occupant load as follows:

1. 500 or fewer persons - two (2) means of egress
2. 501 - 1000 persons - three (3) means of egress
3. 1001 or more persons - four (4) means of egress

Exception No. 1 Use Group R-2

A. Any living unit may have a single exit provided:

(a) That living unit has an exit door directly to the street or yard at ground level, or

(b) That living unit has direct access to an outside stair serving a maximum of two (2) units both located on the same floor, or

(c) That living unit has direct access to an interior stair serving that unit only and separated from all other portions of the building with fire barriers having a one (1)-hour fire resistance rating with no opening therein.

B. Any building of three (3) stories or less may have a single exit under the following conditions:

(a) the stairway is completely enclosed by smoke barriers; and

(b) doors protecting all openings into the stairs are approved 20-minute rated doors, or 1 3/4 inch solid bonded wood core doors with self closing devices; and

(c) the stairway does not serve more than one-half (1/2) story below the level of exit discharge; and

(d) all corridors serving as access to exits are smoke resistant; and

(e) there is not more than thirty-five (35) feet of travel distance from the entrance door

of any living unit to an exit; and

(f) three-quarter (3/4) hour rated vertical and horizontal separation between living units is provided.

C. A building of any height with not more than four (4) living units per floor, with a smokeproof enclosure or outside stair as the exit, immediately accessible to all living units served thereby, may have a single exit. (A unit is immediately accessible if there is not more than 20 ft. (6.1 m) of travel distance from the entrance door of any living unit to an exit.)

Exception No. 2 - Use Group M:

A. Where no part of the store is more than 75 feet from the exit or covered mall, where it is considered a pedestrian way, a single exit is permitted.

B. Where no part of the store is more than 100 feet from the exit or covered mall, where it is considered a pedestrian way and the story on which it is located is protected throughout by an approved automatic sprinkler system, a single exit is permitted.

Exception No. 3 - Use Group B:

A. For a room or area with a total occupant load of less than 100 persons having an exit that discharges directly to the outside at the level of exit discharge of the building with a total distance of travel, including travel within the exit, from any point of not over 100 feet (30 m), a single exit may be permitted. Such travel shall be on the same floor level or, if the traversing of stairs is required, such stairs shall not be more than fifteen (15) feet (4.5 m) in height, and they shall be provided with complete enclosures to separate them from any other part of the building, with no door openings therein. A single outside stairway may serve all floors allowed within the fifteen (15) feet (4.5 m) vertical travel limitation.

B. Any business occupancy not over three (3) stories and not exceeding an occupant load of thirty (30) people per floor may be permitted with a single separate exit to each floor if the total travel distance to the outside of the building does not exceed 100 feet (30 m) and if such exit is enclosed and serves no other levels and discharges directly to the outside. A single outside stairway may serve all floors.

Exception No. 4 - Use Group F:

A. In low and ordinary hazard industrial occupancies, a single means of egress shall be permitted from any story or section, provided that the exit can be reached within the distance allowed as common path of travel.

B. There shall be at least two (2) separate means of egress from every high hazard area regardless of size.

Exception No. 5 - Use Group S:

A. In low hazard storage occupancies, a single means of egress shall be permitted from any story or section.

B. In ordinary hazard storage occupancies, a single means of egress shall be permitted from any story or section, provided that the exit can be reached within the distance allowed as common path of travel."

(b) Amend Table F-401.2 to read as follows:

TABLE F-401.2
ENCLOSURE EXCEPTIONS

Building use group	Exception conditions[a]
Business	When connecting not more than two (2) floor levels and less than 3,500 square feet per floor, or when connecting not more than three (3) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Education	When connecting not more than two (2) floor levels and approved by the State Fire Marshal.
Factory-industrial, storage	When connecting not more than two (2) floor levels, or when connecting not more than three (3) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Mercantile	When connecting not more than two (2) floor levels and less than 2,000 square feet per floor, or when connecting not more than two (2) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Residential-hotels	When connecting not more than two (2) floor levels and the building is equipped throughout with an approved automatic fire suppression system.

Note a. 1 square foot = 0.093 m^2.

(c) Create a new subsection F-401.2.2 to read as follows: "F-401.2.2 Increase in Exits. Additional exits shall be provided to satisfy the travel distance requirements found in Section F-401.5."

(d) Amend subsection F-401.3 and create paragraphs F-401.3.1 through F-401.3.9 to read as follows: "F-401.3 Exit capacity: The capacity of the exits serving a floor shall be sufficient for the occupant load thereof determined as follows:

1. F-401.3.1 Design occupant load: In determining required facilities, the number of occupants for whom exit facilities shall be provided shall be established by the largest number computed in accordance with each of the following:

a. Actual number: The actual number of occupants for whom each occupied space, floor, or building is designed for.

b. Number by Table F-401.3: The number of occupants computed at the rate of one (1) occupant per unit of area as prescribed in Table F-401.3.

c. Number by combination: The number of occupants of any space as computed in a. and b. above, plus the number of occupants similarly computed for all spaces that discharge through the space in order to gain access to an exit.

2. F-401.3.2 Increased occupant load: The occupant load permitted in any building or portion thereof is permitted to be increased from that number established for the given use by Table F-401.3 when all other requirements of the code are also met based on such modified number. Where required by the fire code official, an approved aisle, seating, or fixed equipment diagram to substantiate any increase in occupant load shall be submitted. Where required by the fire code official, such diagram shall be posted.

3. F-401.3.3 Maximum occupant load: The occupant load of any space or portion thereof shall not exceed one (1) occupant per three (3) square feet (0.28 m^2) of occupiable floor space.

4. F-401.3.4 Fixed seats: The occupant load for an assembly or educational area having fixed seats shall be determined by the number of fixed seats installed. The capacity of fixed seats without dividing arms shall equal one (1) person per eighteen (18) inches (457 mm). For booths, the capacity shall be one (1) person for twenty-four (24) inches (610 mm).

5. F-401.3.5 Mezzanine levels: The occupant load of a mezzanine level discharging through a floor below shall be added to that floor's occupant load, and the capacity of the exits shall be designed for the total occupant load thus established.

6. F-401.3.6 Roofs: Roof areas occupied as roof gardens or for assembly, educational, storage or other purposes shall be provided with exit facilities to accommodate the calculated occupant load, but there shall not be less than two (2) approved means of egress from roof areas of Use Groups A and E.

TABLE 401.3
MAXIMUM FLOOR AREA ALLOWANCES PER OCCUPANT

Use	Floor area in square feet per occupant
Assembly with fixed seats	See Section 401.3.4
Assembly without fixed seats	
Concentrated (chairs only/ not fixed)	7 net
Standing space	3 net
Unconcentrated (tables & chairs)	15 net
Bowling alleys, allow 5 persons for each alley including 15 feet of runway and for additional areas	7 net
Business areas	100 gross
Court rooms/other than fixed seating areas	4 net
Educational	
Classroom area	20 net
Shops & other vocational room areas	50 net
Industrial areas	100 gross
Institutional areas	
Inpatient treatment areas	240 gross
Outpatient areas	100 gross
Sleeping areas	120 gross
Library	
Reading rooms	50 net
Stack area	100 gross
Mercantile basement & grade floor areas	30 gross
Areas on other floors	60 gross
Storage, stock, shipping areas	300 gross
Parking garages	200 gross
Residential	200 gross
Storage areas, mechanical equipment room	300 gross

Note a. 1 foot = 304.8 mm; 1 square foot = 0.093m^2

7. F-401.3.7 Assembly buildings: All buildings used for assembly purposes shall front on at least one (1) street on which the main entrance and exit discharge shall be located. Where there is a single main entrance, the entrance shall be capable of serving as the main exit and shall provide an egress capacity for at least one-half (1/2) of the total occupant load. In addition to having access to a main exit, each level of a building of Use Group A shall be provided with additional exits which shall provide an egress capacity for at least two-thirds (2/3) of the total occupant load served by that level.

8. F-401.3.8 The capacity of means of egress for a floor, balcony, tier or other occupied space shall be sufficient for the occupant load thereof.

9. F-401.3.9 Minimum width: The width of each means of egress component shall not be less than the width computed in accordance with Table 401.3.1 for the required capacity of the component, but not less than the minimum width as prescribed by this code for each such component.

TABLE F-401.3.1
EGRESS WIDTH PER OCCUPANT

Use group	Without fire suppression system (inches per person)[a]	
	Stairways	Doors, ramps, corridors
A,B,E,F,M,R,S	0.3	0.2
H	-	-
I-1	0.4	0.2
I-2	1.0	0.7
I-3	0.3	0.2

Use group	With fire suppression system (inches per person)[a]	
	Stairways	Doors, ramps, corridors
A,B,E,F,M,R,S	0.2	0.15
H	0.3	0.2
I-1	0.2	0.2
I-2	0.6	0.5
I-3	0.3	0.2

Note a. 1 inch = 25.4mm"

(e) Amend subsection F-401.5 to read as follows: "F-401.5 Travel Distance to Exits: Travel distance to at least one (1) exit shall not exceed 200 feet in nonsprinklered buildings and 250 feet in buildings equipped throughout with an approved automatic sprinkler system.

Exceptions:

1. Use Group F-2, S-2 shall not exceed 300 feet without sprinklers and 400 feet with sprinklers.

2. An additional 200 feet is permitted for travel distance within a covered mall.

3. In a high rise occupancy with a complete automatic fire suppression system, 300 feet travel distance is permitted.

4. In Use Group H and a HPM facility travel distance shall be limited to 75 feet."

(3) Amend Section F-403 as follows:

(a) Amend subsection F-403.1 and create paragraphs F-403.1.1 through F-403.1.4 to read as follows: "F-403.1. Egress Illumination. Illumination of means of egress shall be provided in accordance with this section for every building and structure. Exception: Means of egress illumination may be eliminated in structures of Use Group F or S occupied only during daylight hours, with skylights or windows arranged to provide, during these hours, the required level of illumination on all portions of the means of egress."

1. "F-403.1.1 Illumination of means of egress shall be continuous during the time that the conditions of occupancy require that the means of egress be available for use. Artificial lighting shall be employed at such places and for such periods of time as required to maintain the illumination to the minimum foot-candle values herein specified."

2. "F-403.1.2 The floors of means of egress shall be illuminated at all points including angles and intersections of corridors and passageways, stairways, landings of stairs, and exit doors to values of not less than 1.0 foot-candle measured at the floor. Exception: In auditoriums, theatres, concert or opera halls, and other places of assembly, the illumination of the floors of exit access may be reduced during such periods of the performances to values not less than one-fifth foot candle."

3. "F-403.1.3 Any required illumination shall be so arranged that the failure of any single lighting unit, such as the burning out of an electric bulb, will not leave any area in darkness."

4. "F-403.1.4 The same equipment or units installed to meet the requirements of this Code may also serve the function of illumination of means of egress, provided that all applicable requirements of this section for such illumination are also met."

(b) Create a new subsection, F-403.6, and paragraphs F-403.6.1 through F-403.6.3 to read as follows: "F-403.6, Sources of Illumination. Illumination of means of egress shall be from a source of reasonably assured reliability, such as public utility electric service."

1. F-403.6.1 Where electricity is used as a source of illumination of means of egress, the installation shall be properly made in accordance with the National Electrical Code, NFiPA 70.

2. F-403.6.2 No battery operated electric light nor any type of portable lamp or lantern shall be used for primary illumination of means of egress, but may be used as an emergency source to the extent permitted under Emergency Lighting, Section F-404.0.

3. F-403.6.3 No luminescent, fluorescent, or reflective material shall be permitted as a substitute for any of the required illumination herein specified."

(c) Create a new Subsection F-403.7 and paragraphs F-403.7.1 through F-403.7.5 to read as follows: "F-403.7 Emergency Lighting. Means of egress in all rooms, buildings or spaces with an occupant load of more than 100 persons shall be provided with emergency lighting. Exception: All places of assembly shall have emergency lighting. Churches with an occupant load of 300 persons or less and used only for religious purposes are exempt."

1. "F-403.7.1 Where maintenance of illumination depends upon changing from one energy source to another, there shall be no appreciable interruption of illumination during the changeover. Where emergency lighting is provided by a prime mover-operated electric generator, a delay of not more than ten (10) seconds shall not permitted."

2. "F-403.7.2 Emergency lighting facilities shall be arranged to maintain the specified degree of illumination for a period of one and one-half (1 1/2) hours in the event of failure of the normal lighting."

3. "F-403.7.3 Emergency lights shall use only reliable types of storage batteries, provided with suitable facilities for maintenance in properly charged condition. Dry batteries shall not be used to satisfy these requirements. Electric storage batteries used in such lights or units shall be approved for their intended use and shall comply with the National Electrical Code, NFiPA 70, listed in Appendix A."

4. "F-403.7.4 An emergency lighting system shall be so arranged as to provide the required illumination automatically in the event of any interruption of normal lighting, such as any failure of public utility or other outside electrical power supply, opening of a circuit breaker or fuse, or any manual act(s), including accidental opening of a switch controlling normal lighting facilities."

5. "F-403.7.5 An emergency lighting system either shall be continuously in operation or shall be capable of repeated automatic operation without manual intervention."

(4) Amend Section F-404 as follows:

(a) Create a new paragraph, F-404.4.2, to read as follows: "F-404.4.2 Where such smoke detection devices are installed, they shall be electrically (AC) powered. Note: Where frequent power failure occurs, the use of smoke detection devices having a battery back-up is recommended."

(b) Amend subsection F-404.5 and create paragraph F-404.5.1 to read as follows: "F-404.5 Alarm and Detection Systems. Every alarm and detection system required by this section shall be installed and maintained in accordance with Article 5."

1. "F-404.5.1 Fire Protective Signaling Systems (manual alarms) shall be required in:

a. All buildings of Use Group E;

b. All buildings of Use Group B when three (3) or more stories in height;

Exception: Buildings less than seven (7) stories in height equipped with a complete approved automatic sprinkler system.

c. All buildings of Use Group R-1;

Exception: Buildings where each guest room has exterior exit access and the building is not greater than three (3) stories in height.

d. All buildings of Use Group R-2 when four (4) or more stories in height."

(5) Create a new Section F-407 to read as follows:

(a) "F-407.0 Emergency Generators."

(b) "F-407.1 Conduct or Witness Test. The fire code official may conduct or witness a test on the complete system upon installation."

(c) "F-407.2 Tested Periodically. Systems shall be tested periodically on a schedule and in a manner acceptable to the fire code official to assure their maintenance in proper operating condition as required by NFiPA 70 listed in Appendix A."

(d) "F-407.3 Battery Systems Maintenance. Where batteries are used for starting or ignition of prime movers, the fire code official shall require periodic maintenance."

(e) "F-407.4 Written Record. A written record shall be kept on such tests and maintenance."

(f) "F-407.5 Testing under Load. Means for testing legally required standby systems under load shall be provided."

(6) Create a new Section F-408 to read as follows: "F-408.1 Storage Rooms. Rooms used for storage in Use Groups A, B, M, E, R-1 and R-2 in excess of twenty-four (24) square feet shall be constructed of materials having a minimum of one (1)-hour fire resistance rating or be protected by an approved automatic fire suppression system."

(7) Create a new Section F-409 to read as follows: "F-409.0 Marking of Means of Egress."

(a) "F-409.1 Exits in all rooms, buildings or spaces with an occupant load greater than fifty (50) persons shall be clearly marked with approved exit signs.

Exceptions:

1. Main exterior doors that obviously and clearly are identifiable as exits.

2. Previously approved exit signs."

(b) "F-409.2 Access to exits shall be marked by readily visible signs in all cases where the exit or way to reach it is not immediately visible to the occupants."

(c) "F-409.3 Every required sign designating an exit or way of exit access shall be so located and of such size, distinctive color, and design as to be readily visible and shall provide contrast with decorations, interior finish, or other signs. (See, also, Section F-604.0)"

(d) "F-409.4 Size of Signs. Every sign required by this Code shall have the word "EXIT" or other required wording in plainly legible letters not less than six (6) inches high with the principal strokes of letters not less than three-quarters (3/4) inch wide. Exception: Existing signs having the required wording in plainly legible letters not less than four and one-half (4 1/2) inches high may be continued in use."

(e) "F-409.5 Illumination of Signs. Every sign shall be suitably illuminated by a reliable light source giving a value of not less than five (5) foot-candles on the illuminated surface. Such illumination shall be continuous as required under the provisions of Section 403.0 Illumination of Means of Egress, and where emergency lighting facilities are required, exit signs shall be illuminated from the same source."

(8) Create a new Section, F-410, to read as follows: "F-410.0 Special Occupancy Requirements."

(a) "F-410.1 Assembly."

1. "F-410.1.1 Location of Places of Assembly. The location of a place of assembly shall be limited as follows: Places of assembly located above or below the level of exit discharge shall comply with the minimum construction type set forth in F-410.1.1."

CHART 410.1.1

Use group	Type of Construction: Noncombustible: Type 1 Protected 1A	Type 1 Protected 1B	Type 2 Protected 2A	Type 2 Protected 2B	Type 2 Unprotected 2C
A-1 Assembly, theaters	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'
A-2 Assembly, night clubs and similar uses	N.L.	4 St. 50'	3 St. 40'	2 St. 30'	1 St. 20'
A-3 Assembly; lecture halls, recreation centers, terminals, restaurants other than nightclubs	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'
A-4 Assembly, churches	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'

Use group	Type of Construction: Noncombustible/Combustible Type 3 Protected 3A	Type 3 Unprotected 3B	Type 4 Heavy Timber 4	Combustible Type 5 Protected 5A	Type 5 Unprotected 5B
A-1 Assembly, theaters	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'
A-2 Assembly, night clubs and similar uses	2 St. 30'	1 St. 20'	2 St. 30'	1 St. 20'	1 St. 20'
A-3 Assembly; lecture halls, recreation centers, terminals, restaurants other than nightclubs	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'
A-4 Assembly, churches	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'

Exception: Places of assembly are permitted to be one (1) additional story in height than specified in buildings provided with 100% automatic sprinkler protection.

2. "F-410.1.2 Assembly Aisles: Assembly aisles in buildings or portions of buildings of Use Group A shall conform to the requirements of the Building Code listed in Appendix A."

(b) "F-410.2 Educational."

1. "F-410.2.1 Exit access corridors shall be not less than six (6) feet clear width."

2. "F-410.2.2 Janitor closets shall be protected by an automatic sprinkler or an approved automatic detection device."

3. "F-410.2.3 Interior corridors shall be smoke resistant. Classroom doors opening into corridors shall have a minimum twenty (20) minute rating or be one and three-quarter (1 3/4) inch solid bonded wood core doors. Doors shall be solid.

Exception 1. When all classrooms served by the corridor have an exterior exit.

Exception 2. When the building has an approved automatic sprinkler system approved by the State Fire Marshal.

Exception 3. When the corridor smoke detection is provided and interconnected to the building alarm system."

4. "F-410.2.4 Approved emergency lighting shall be installed in windowless classrooms."

(c) "F-410.3 Hotels and Dormitories."

1. "F-410.3.1 Guest room doors which open onto an interior exit access corridor shall have a minimum twenty (20) minute fire resistance rating or be one and three quarter (1 3/4) solid bonded wood core door and be self-closing."

(d) "F-410.4 Apartments."

1. "F-410.4.1 Doors between living units and interior exit access corridors shall have a minimum twenty (20) minute fire resistance rating or be one and three-quarter (1 3/4) solid bonded wood core doors. All corridors serving as exit access shall provide an effective smoke barrier.

Exception 1. When the building has an approved sprinkler system in the corridor.

Exception 2. When there are approved interconnected smoke detectors in each corridor on every level. Such detectors shall be spaced not greater than thirty (30) feet on center."

2. "F-410.4.2 All doors, rated or not, between living units and corridors shall be self-closing. Only approved self-closing devices shall be used. Approved spring loaded hinges are acceptable."

3. "F-410.5 Lodging or Rooming Houses."

4. "F-410.5.1 Lodging or rooming houses shall conform to the requirements of Use Group R-2 in the Building Code listed in Appendix A.

Exception: Lodging or rooming houses which have accommodations for sixteen (16) or fewer persons shall have a primary means of egress available to every sleeping room and a secondary means of escape consisting of one (1) of the following:

a. A door, stairway, passage or hall (independent of and remote from the primary means of escape) which provides an unobstructed way of travel to the exterior at street or ground level, or

b. A passage through an adjacent, nonlockable space to an approved means of escape which is independent of and remote from the primary means of escape, or

c. A window in accordance with Section F-603.0."

(e) "F-410.6 Mercantile."

1. "F-410.6.1 No dwelling unit may have its sole means of egress through any mercantile occupancy in the same building."

2. "F-410.6.2 No multiple dwelling occupancy shall be located above a mercantile occupancy.

Exception 1. When the dwelling and their exits are separated from the mercantile occupancy with one (1) hour construction.

Exception 2. When approved by the fire code official."

3. "F-410.6.3 Doors which serve only the street floor in mercantile occupancies with 3,000 square feet or less may swing inward."

(f) "F-410.7 Business."

1. "F-410.7.1 A residential occupancy shall not be permitted over a business occupancy unless the residential occupancy and its exits are separated by one (1) hour construction.

Exception: When approved by the fire code official."

2. "F-410.8 Mixed Uses."

3. "F-410.8.1 When a building is occupied for two (2) or more uses, not of the same use group, it shall comply with the requirements of the building code listed in Appendix A."

Section 7. Article 5. (1) Amend Section F-500.3 to read as follows: "F-500.3 Acceptance Test: Before final approval and acceptance of fire suppression, alarm, detection or any other fire protection device including emergency generators and fire ventilating systems, in any building or structure, the installation shall be subjected to the tests prescribed herein and conducted in the presence of the fire code official. A building, structure or any portion thereof shall not be occupied until all required fire protection systems have been tested and approved. Testing shall be performed only by persons authorized by the State Fire Marshal's Office. The fire code official shall be afforded the opportunity to observe all tests."

(2) Amend subsection F-500.4 to read as follows: "F-500.4 Tests: The owner or owners representative shall cause all required tests to be conducted. The test shall be at the expense and risk of the owner or owner's representative. The fire code official shall not be held responsible for any damages incurred during any such test. Where the fire code official is to be present for tests under the provisions of this article, the fire code official shall be notified not less than forty-eight (48) hours before said test is made."

(3) Amend Section F-502 as follows: "F-502.1 General: All fire protection systems, devices, units and service equipment, including all rangehood systems which were installed in compliance with any law, ordinance or order, shall be maintained in an operative condition at all times, and it shall be unlawful for any owner, occupant or other entity to reduce the effectiveness of the protection so required; except this shall not prohibit the owner or occupant from temporarily reducing or discontinuing the protection where necessary to make tests, repairs, alterations or additions. The fire code official shall be notified before disconnection and interruption of protection, tests, repairs, alterations or additions are started and upon its completion, and shall be advised of the extent of and reason for such work. The restoration of the protection shall be diligently pursued."

(a) "F-502.4 Vacant buildings: Vacant or unoccupied buildings or portions thereof shall maintain all required sprinkler and standpipe

systems and all component parts in a workable condition at all times. Fire alarm systems shall be maintained in operating condition at all times, except when the building is vacated for periods of more than one (1) week, and the system shall be tested in accordance with Subsections F-500.3 through F-500.4.

Exception: Where the type of construction fire separation and security of the building is such as not to create a fire hazard as approved by the fire code official."

(4) Amend Section F-503 as follows: "F-503.1 General: Inspection and field tests of fire suppression, alarm, detection and any other fire protection systems, devices and equipment shall be conducted in accordance with Subsections F-500.3 through F-500.4."

(a) "F-503.8 Fire safety devices:

1. Smoke control systems shall be inspected and operated at six (6) month intervals.

2. Other special fire safety devices including emergency generators and any other special fire safety equipment shall be tested annually by the owner or an authorized representative.

3. Battery-powered single station smoke detectors shall be inspected or tested weekly, other than battery-powered single station smoke detectors shall be inspected or tested monthly by the owner or an authorized representative. The results of such tests shall be logged in a journal kept available for inspection in accordance with approved procedures."

(b) "F-503.9 Test records: A complete written record of all tests and inspections required under this article shall be maintained on the premises by the owner or occupant in charge of said premises. All inspections and tests, except tests performed under F-503.8 (3.) shall be recorded on forms approved by the State Fire Marshal's Office; a copy of the inspection report shall be forwarded to the State Fire Marshal's Office within ten (10) working days of the date of inspection."

(5) Amend Section F-504 as follows: "F-504.1 General: All standpipe systems and equipment, including fire pumps, shall be tested and approved before the system is placed into service. Testing shall be in accordance with Sections F-300.3 through F-300.4."

(6) Amend Section F-505 as follows: "F-505.1 General: All suppression systems shall be tested and approved before said system is placed into service. Testing shall be in accordance with F-500.3 through F-500.4."

(7) Amend Section F-506 as follows: "F-506.1.3 Performance: Pumps shall furnish not less than 150 percent of rated capacity at a total head of not less than 65 percent of total rated head. The shutoff total head for horizontal shaft pumps shall not exceed 140 percent of the total rated head. The inlet pressure available from a water supply shall be figured on a basis of flow of 150 percent of the rated capacity of the pump, as indicated by a flow test. The pressure in public mains shall not be reduced in pressure below 20 psi (138 k Pa) while the pump is operating at 150 percent of its rated capacity."

(8) Amend Section F-507 as follows: "F-507.2 Periodic inspection: An approved inspection shall be performed a minimum of once every six (6) months on each commercial kitchen exhaust suppression system. Inspections and tests shall only be made by a licensed rangehood suppression systems contractor. The inspection shall ascertain that the system will cover all the cooking surfaces with the extinguishing agent when manually or automatically actuated. The manual actuation, automatic actuation, and system interconnections shall also be inspected to determine that they operate as required. All inspections and tests shall be recorded on forms approved by the State Fire Marshal's Office; a copy of the inspection report shall be forwarded to the State Fire Marshal's Office within ten (10) working days of the date of inspection. Exception: Single station detectors."

(9) Amend subsection F-509.3 and create a new subsection F-509.4 to read as follows:

(a) "F-509.3 Maintenance and periodic tests: Fire alarm systems and all devices attached thereto shall be maintained in proper working order at all times and shall be subjected to periodic tests as required by Section F-503.0 of this code. Testing shall be in accordance with Sections F-500.3 through F-500.4. Exception: Vacant buildings (See Section F-502.4)."

(b) "F-509.4 Tests records: All inspections and tests shall be recorded on forms approved by the State Fire Marshal's Office; a copy of the inspection report shall be forwarded to the State Fire Marshal's Office within ten (10) working days of the date of the inspection."

Section 8. Article 6 is hereby adopted in its entirety.

Section 9. Article 7. (1) Create a new subsection, F-700.2, to read as follows: "F-700.2 Fire Exit Drills."

(a) "F-700.2.1 Fire exit drills conforming to the provisions of this Article shall be regularly conducted in occupancies where specified by the provisions of this Article or by appropriate action of the fire code official. Drills shall be designed in cooperation with the local authorities."

(b) "F-700.2.2 Fire exit drills, where required by the fire code official, shall be held with sufficient frequency to familiarize all occupants with the drill procedure and to have the conduct of the drill a matter of established routine."

(c) "F-700.2.3 Responsibility for the planning and conduct of drills shall be assigned only to competent persons qualified to exercise leadership."

(d) "F-700.2.4 In the conduct of drills, emphasis shall be placed upon orderly evacuation under proper discipline rather than upon speed."

(e) "F-700.2.5 Drills shall include suitable procedures to make sure that all persons in the building, or all persons subject to the drill, actually participate."

(f) "F-700.2.6 Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in the case of fire."

(g) "F-700.2.7 The fire code official may observe fire exit drills but shall not activate the alarm system."

(h) "F-700.2.8 Records of required drills shall be kept and made available to the state or local fire marshal."

(2) Amend Section F-701, Places of Assembly, to read as follows:

(a) "F-701.1 Drills. The employees or attendants of places of public assembly shall be schooled and drilled in the duties they are to perform in case of fire, panic, or other emergency in order to be of greatest service in

effecting orderly exit of assemblages."

(b) "F-701.2 Employees or attendants of assembly occupancies shall be instructed in the proper use of portable fire extinguishers and other manual fire suppression equipment if provided. The management shall be responsible for procuring the required training. Training records shall be kept and made available to the state or local fire marshal."

(c) "F-701.3 In theaters, motion picture theaters, auditoriums, and other similar assembly occupancies with occupant load of 300 or more, occupancies where there are noncontinuous programs, an audible announcement shall be made prior to the start of each program to notify occupants of the location of the exits to be used in case of fire or other emergency. Exception: Assembly occupancies in schools when used for nonpublic events."

(d) "F-701.4 Open Flame Devices. No open flame devices shall be used in any assembly occupancy.

Exception 1. When necessary for ceremonial, religious, or demonstration purpose, the fire code official may permit open flame devices under such restrictions as are necessary to avoid danger of ignition of combustible materials or injury to occupants.

Exception 2. Open flame devices may be used on stages when a necessary part of theatrical performances, provided adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

Exception 3. Gas lights may be permitted provided adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

Exception 4. Candles may be used on tables if securely supported on substantial noncombustible bases so located as to avoid danger of ignition of combustible materials and only if approved by the fire code official. Candle flames shall be protected.

Exception 5. As permitted in F-701.5."

(e) Create new subsections F-701.5 through F-701.8.1 to read as follows: "F-701.5 Special Food Service Devices. Portable cooking equipment, not flue-connected, shall be permitted only as follows:

1. Equipment fuel by small heat sources that can be readily extinguished by water, such as candles or alcohol-burning equipment (including "solid alcohol"), may be used provided adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

2. Candles may be used on tables used for food service if securely supported on substantial noncombustible bases so located as to avoid danger of ignition of combustible materials and only if approved by the fire code official. Candle flame shall be protected by a suitable noncombustible globe.

3. "Flaming Sword" or other equipment involving open flames and flamed dishes, such as cherries jubilee, crepes suzette, etc., may be permitted provided that necessary precautions are taken and subject to the approval of the fire code official.

(f) "F-701.6 Smoking."

1. "F-701.6.1 Smoking in assembly occupancies shall be regulated by the fire code official of the jurisdiction."

2. "F-701.6.2 Smoking in rooms or areas where smoking is prohibited, plainly visible "NO SMOKING" signs shall be posted."

3. "F-701.6.3 No person shall smoke in prohibited areas that are so posted. Exception: The fire code official may permit smoking on a stage only when it is a necessary and rehearsed part of a performance and only by a regular performing member of the cast."

4. "F-701.6.4 Where smoking is permitted, suitable ashtrays or receptacles shall be provided in convenient locations. Ashtrays shall conform to the requirements of F-312.6."

(g) "F-701.7 Furnishings, Decorations, and Stage Scenery."

1. "F-701.7.1 Draperies, curtains, and other similar furnishings, decorations, and stage settings shall be in accordance with the provisions of F-306.0."

2. "F-701.7.2 The fire code official shall impose controls on the amount and arrangement of combustible contents, including decorations, in assembly occupancies to provide an adequate level of safety to life from fire."

3. "F-701.7.3 There shall be no exposed foamed plastics."

(h) "F-701.8 Coat Racks. F-701.8.1 Clothing and personal effects shall not be stored in corridors and lobbies."

(3) Amend Section 702 as follows:

(a) Amend subsection F-702.1 and create paragraphs F-702.1.1 through F-702.1.7 to read as follows: "F-702.1 Drills. Exit drills shall be conducted regularly in accordance with the applicable provisions of this section and Section F-700.2."

1. "F-702.1.1 Drills shall be executed at different hours of the day or evening; during the changing of classes; when the school is at assembly; during the recess or gymnastic periods; etc., so as to avoid distinction between drills and actual fires. If a drill is called when pupils are going up and down the stairways, as during the time classes are changing, the pupils shall be instructed to form in file and immediately proceed to the nearest available exit in an orderly manner."

2. "F-702.1.2 Every fire exit drill shall be an exercise in school management for principal and teachers, with the chief purpose of every drill being the complete control of the class so that the teacher will form its ranks quickly and silently, may halt it, turn it, or direct it as desired. Great stress shall be laid upon the execution of each drill in a brisk, quiet, and orderly manner. Running shall be prohibited. In case there are pupils incapable of holding their places in a line moving at a reasonable speed, provisions shall be made to have them taken care of by the more sturdy pupils, who will keep them from moving independently from the regular line of march."

3. "F-702.1.3 Monitors shall be appointed from the more mature pupils to assist in the proper execution of all drills. They shall be instructed to hold doors open in the line of march or to close doors where necessary to prevent spread of fire or smoke. There shall be at least two (2) substitutes for each appointment so as to provide for proper performance in case of absence of the regular monitors. The searching of toilet or other rooms shall be the duty of the teachers or other members of the staff. If the teachers are to search, it should be done after they have joined their classes to the preceding lines."

4. "F-702.1.4 As all drills simulate an actual fire condition, pupils shall not be allowed to

obtain clothing after the alarm is sounded, even when in home rooms, on account of the confusion that would result in forming the lines and the danger of tripping over dragging apparel."

5. "F-702.1.5 Each class or group shall proceed to a predetermined point outside the building and remain there while a check is made to see that all are accounted for, leaving only when a recall signal is given to return to the building, or when dismissed. Such points shall be sufficiently far away from the building and from each other as to avoid danger from any fire in the building, interference with fire department operations, or confusion between different classes or groups."

6. "F-702.1.6 Where necessary for drill lines to cross roadways, signs reading "STOP! SCHOOL FIRE DRILL," or equivalent, shall be carried by monitors to the traffic intersecting points in order to stop traffic firing the period of the drill."

7. "F-702.1.7 Fire exit drills in schools shall not include any fire extinguishing operations."

(b) Create a new subsection to read as follows, "F-702.5 Fire Alarm Signals," to read as follows:

1. "F-702.5.1 All fire exit drill alarms shall be sounded on the fire alarm system."

2. "F-702.5.2 Whenever any of the school authorities determine that an actual fire exists, they shall notify the fire department using the public fire alarm system or such other facilities as are available."

3. "F-702.5.3 In order to prevent pupils from being returned to a building that is burning, the recall signal shall be one that is separate and distinct from, and cannot be mistaken for, any other signals. Such signals may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls shall be kept under lock, the key for which shall be in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a fire. Regardless of the method of recall, the means of giving the signal shall be kept under a lock."

4. "F-702.5.4 Inspection."

a. "F-702.5.4.1 It shall be the duty of principals and teachers to inspect all exit facilities daily in order to make sure that all stairways, doors, and other exits are in proper condition."

b. "F-702.5.4.2 Open-plan buildings require extra surveillance to ensure that exit paths are maintained clear of obstruction and are obvious."

(4) Delete Section F-703, F-704 and F-705 in their entirety.

(5) Create a new Section, "F-707.0 Residential Occupancies" to read as follows:

(a) "F-707.1 Hotel Emergency Organization."

1. "F-707.1.1 All employees of hotels shall be instructed and drilled in the duties they are to perform in the event of fire, panic, or other emergency."

2. "F-707.1.2 Drills of the emergency organization shall be held at monthly intervals, covering such points as the operation and maintenance of the available first aid fire appliances, the testing of guest alerting devices, and a study of instructions for emergency duties."

(b) "F-707.2 Emergency Duties. The owner or other person in control of the premises shall take immediate action to control any fire on the premises."

1. "F-707.2.1 Upon discovery of fire, some or all of these duties will become immediately imperative, the number and sequence depending upon the exact situation encountered:

Alarms

Notify office.

Notify public fire department.

Notify private fire brigade.

Guests

Warn guests or others who are or may become endangered.

Assist Occupants to safety, with special attention to aged, infirm, or otherwise incapacitated persons. Search rooms to be sure all occupants have escaped.

Man all elevators, including those of automatic type, with competent operators.

Extinguishment

Extinguish or control the fire using available first aid equipment.

Send messenger to meet public fire department upon arrival in order to direct latter to exact location of fire. (The public fire department is in full command upon arrival.)

Special Equipment

Fire Pumps - stand by for instant operation.

Ventilating Equipment - in case of dense smoke, stand by, operate under proper instructions to clear area affected.

Refrigerating Equipment - if machines are definitely endangered, shut them down and blow refrigerant to sewer or atmosphere to prevent explosion.

Generators and Motors - protect against water damage with tarpaulins - shut down motors not needed - keep generators operating to furnish lights, elevator power, etc.

Boilers - if necessary to abandon boiler room, extinguish or dump fire and lower steam pressure by blowing to sewer or atmosphere to prevent possible explosion.

(c) "F-707.3 Dormitory Drills."

1. "F-707.3.1 Fire exit drills shall be regularly conducted in accordance with F-701.0."

(d) "F-707.4 Emergency instructions for Residents or Guests."

1. "F-707.4.1 A floor diagram reflecting the actual floor arrangement, exit locations, and room identification shall be posted in a location and manner acceptable to the fire code official on or immediately adjacent to every guest room door in hotels and in every resident room in dormitories."

2. "F-707.4.2 Fire safety information shall be provided to allow guests to make a decision to either: evacuate to the outside; evacuate to an area of refuge; remain in place; or any combination of the three (3)."

(e) "F-707.5 Emergency Instructions for Residents of Apartment Buildings."

1. "F-707.5.1 Emergency instructions shall be provided to each living unit on a yearly basis indicating the location of alarms, exiting paths, and actions to be taken, both in response to a fire in the living unit and in response to the sounding of the alarm system."

(f) "F-707.6 Furnishings and Decorations."

1. "F-707.6.1 New draperies, curtains, and other similar furnishings and decorations in hotels and dormitories shall be in accordance with the provisions of F-706.0."

(g) "F-707.7 Unvented fuel-fired heaters shall not be used in residential occupancies.

Exception: Listed and approved unvented fuel-fired heaters in one (1) and two (2) family dwellings."

(h) "F-707.8 Gas Grills on balconies of multifamily dwellings."

1. "F-707.8.1 Gas grills with propane containers shall not be located on balconies above the first floor attached to a multifamily dwelling of three (3) or more living units located one (1) above the other. (See NFiPA 58-1989, Section 3-4.9.2)"

(6) Create a new Section, "F-708.0 Mercantile Occupancies" to read as follows:

(a) "F-708.1 In every mercantile store of more than 3,000 gross square feet, employees shall be regularly trained in fire exit drills."

(b) "F-708.2 Employees of mercantile occupancies shall be instructed in the proper use of portable fire extinguishers."

(7) Create a new Section, "F-709.0 Business Occupancies" to read as follows:

(a) "F-709.1 Drills. In any building subject to occupancy by more than 500 persons or more than 100 above or below the street level, employees and supervisory personnel shall be instructed in fire exit drill procedures in accordance with 31-1.5 and shall hold practice drills periodically where practicable."

(b) F-709.2 Employees of business occupancies shall be instructed in the proper use of portable fire extinguishers."

(8) Create a new subsection, "F-710.0 High-Rise Buildings" to read as follows:

(a) "F-710.1 General: The owner or other person having charge of buildings identified as high-rise buildings in the building code listed in Appendix A shall be required to prepare and submit for review and approval a fire safety plan and evacuation procedure as set forth in this section."

(b) "F-710.2 Fire safety plan: The fire safety plan shall be distributed to the tenants and building service employees by the owner or agent. Tenants shall distribute to their employees applicable parts of the fire safety plan which affect their action in the event of a fire or emergency."

(c) "F-710.3 Responsibility to update fire safety plan: It shall be the responsibility of the owner or agent to promptly update the fire safety and evacuation procedures upon changes in occupancy, use or physical arrangement."

Section 10. Articles 8 through 16 are adopted in their entirety unchanged.

Section 11. Article 17. (1) Delete subsection F-1700.2 in its entirety.

(2) Amend Subsection F-1703.2 by adding an exception for places of assembly and education to read as follows: "Exception: Panic hardware for Use Group A-3 is not required for the principal entrance/exit doors if: (1) they are free-swinging and (2) the calculated occupant load does not exceed 150, and the latch/lock device is a thumb latch/lock or a key operated device in which the key cannot be removed from the side from which egress is to be made when it is locked."

Section 12. Articles 18 through 26 are adopted in their entirety unchanged.

Section 13. Article 27. (1) Amend Subsection F-2700.1 to read: "See Kentucky Revised Statute 227.750 through 227.810, Title 815, Chapter 30 of Kentucky Administrative Regulations for requirements for fireworks."

(2) Delete Subsections F-2700.2 through F-2701.4 in their entirety.

Section 14. Article 28. (1) Amend Subsection F-2800.2 and create paragraphs F-2800.2.1 through F-2800.2.2 to read as follows, "Permit Requirements. A permit shall be obtained as set forth in this Subsection."

(a) "F-2800.2.1 Local Permit Requirements. A permit shall be obtained from an authorized local fire code official for the following:

1. The storage or handling of Class I liquids in excess of one (1) gallon in any building of "residential occupancy," in excess of ten (10) gallons inside any other building, and in excess of fifty (50) gallons outside of any building.

2. Storage and handling of Class II liquids in excess of ten (10) gallons in any buildings of "residential occupancy," in excess of sixty (60) gallons inside any other building, and in excess of 120 gallons outside of any building.

3. The storage and handling of Class III liquids in excess of 275 gallons inside any building, and in excess of 1,100 gallons outside of any building.

4. Quantities of paints, oil, varnishes, and similar flammable liquids in excess of those given above, for use on the premises, stored for not more than thirty (30) days. For storage exceeding thirty (30) days, a state permit shall be required."

(b) "F-2800.2.2 State Permit Requirements for Flammable Liquids. A permit shall be obtained from the State Fire Marshal for all changes in construction, remodeling or operation of any refinery, bulk storage plant, distributing station, service station, or airports not under jurisdiction of Kentucky Building Code."

Section 15. Article 29 is adopted in its entirety unchanged.

Section 16. Article 30. (1) Amend Subsection F-3000.2 and create paragraphs F-3000.2.1 through F-3000.2.2 to read as follows, "F-3000.2 State Permits for Liquefied Petroleum Gas. A permit shall be obtained from the State Fire Marshal prior to:"

(a) "F-3000.2.1 The transportation, selling, storing for resale, or delivering of liquefied petroleum gases, or for engaging in the business of installing or servicing liquefied petroleum gas equipment; or for persons who actually perform such installations or servicing operations. Licenses issued under this section shall be in accordance with the provisions of KRS 234.120. Under this section licenses or permits are not required for storage or transportation in quantities of less than one (1) gallon where the gas is an integral part of the device for its utilization, or for use as a motor fuel while in the fuel tank of the motor vehicle."

(b) "F-3000.2.2 The construction or substantial remodeling of any plant or building containing an occupancy for which a license is required under KRS 234.120 relating to the storage and handling of liquefied petroleum gases. This requirement shall be a supplement to any Kentucky Building Code requirement."

Section 17. Articles 31 through 34 and

Appendix A are adopted in their entirety unchanged.

Section 18. The effective date of this regulation shall be April 15, 1990.

Section 19. This regulation repeals 815 KAR 10:020.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 9, 1989
FILED WITH LRC: November 13, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on December 21, 1989 at 1 p.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. 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: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by December 16, 1989, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: Existing commercial, public buildings and multifamily dwellings.
(a) Direct and indirect costs or savings to those affected: The regulation will result in costs of making fire safety alterations to buildings but only if a hazard exists in the facility.
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: Regular inspection reports, hearings, etc., as have been carried on for many years. No new costs.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No increased costs are involved because staff will provide similar inspections.
1. First year: The cost of publication of the new book will be offset by the price for which it is sold.
2. Continuing costs or savings: More efficient than previous codes because they are designed to interact with requirements of the Kentucky Building Code.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No change in paperwork requirements through the citations for violations, computer adjustments, etc.
(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on local revenue except a potential for permits if they so choose.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Adoption of National Fire Codes was rejected in favor of use of BOCA National Fire Code with fire codes referenced in Appendix. Consistency with Kentucky Building Code important.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS Chapter 198B and uniform standard building code.
(a) Necessity of proposed regulation if in conflict: Need appropriate up-to-date minimum standards to require fire safety in both old buildings and maintenance of fire safety in buildings constructed under the KBC.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Article 1 of the KY Standards of Safety and the KBC are harmonized to avoid conflict. It allows the building official to refer to Standards of Safety if necessary and lets fire official enforce code where it was never approved when built. SFM enforcement powers include the ability to help enforce all laws relating to fire safety.
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Intended to affect local government to the extent that every local government is supposed to adopt and enforce the standards of safety, pursuant to KRS 227.320.
3. State the aspect or service of local government to which this administrative regulation relates. Fire safety inspections, reporting and enforcement.
4. How does this administrative regulation affect the local government or any service it provides? Merely provides appropriate standards for use statewide by each local government.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the November 1 and 2, 1989 Meeting

The November meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, November 1, 1989 at 1 p.m. and on Thursday, November 2, 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 Representative Bruce, seconded by Senator McCuiston, the minutes of the October 4 and 5, 1989 meeting were approved.

Present November 1, 1989 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Gene Huff and Pat McCuiston; Representatives Jim Bruce; Ronny Layman and Tom Kerr.

Present November 2, 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.

Guests: Daniel F. Egbers, Roger Futrell, Jean Ann Gabbard, Tommy Greenwell, C. E. Vineyard, Department of Personnel; Arthur Hatterick, Jr., Personnel Board; Joe G. Hall, Jim Oliver, Revenue Cabinet; Richard L. Ross, Board of Pharmacy; John A. Harrison, Larry Perkins, Joe Sisler, Board of Registration for Professional Engineer and Land Surveyors; Don R. McCormick, Jeffery Sole, George Wright, Department of Fish and Wildlife Resources; Betty Beshoar, William J. Grable, Pat Haight, Dave Rosenbaum, Jim Villines, Art Williams, Natural Resources & Environmental Protection Cabinet; Michael Bradley, Barbara Hickey, Ellen Tharpe, Corrections Cabinet; Sandy Pullen, Transportation Cabinet; Gary Bale, Jim Burnette, Clara DeMoss, Carole Kruse, Department of Education; Maria Fitzpatrick, Ronda Paul, Department of Financial Institutions; Joyce A. Bothe, Barbara Coleman, Reginald Finger, M.D., Ted Hanekamp, N. Clifton Howard, David A. Raines, Jr., Patricia J. Russell, Mark Yancey, Cabinet for Human Resources; David Boswell, Governor's Office; Jane C. Driskell, Justice Cabinet; Tony Anderson, Charles B. Wells, Kentucky Association of State Employees; Ted Bradshaw, Kentucky Bankers Association; Bill Caylor, Tom Duncan, Kentucky Coal Association; Nancy Galvagni, Kentucky Hospital Association; Tom Fitzgerald, Kentucky Resources Council; Cornelia F. Calhoun, Phyllis Jenkins, Tyrone C. Redden, Mary L. Smith, Reginald L. Thomas, Shirley Thomas, Kentucky State University; James I. Terry.

Press: John Voskuhl, Courier-Journal.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Donna Pierce, John A. McCoy and Carla Arnold.

The Administrative Regulation Review Subcommittee met on November 1 and 2, 1989, and submits this report:

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Revenue Cabinet: Department of Administrative Services: Selective Excise Tax; Motor Fuels

103 KAR 43:310 (Subjobber issuance of refund invoices.) Section 3 of this administrative regulation was amended to delete the words "rules and conditions" and to insert in lieu thereof the words "statutory and regulatory requirements". This amendment is required to comply with KRS Chapter 13A which provides that no administrative body except the courts may promulgate rules, and that implementation of statutory authority shall be effected through regulations.

General Government Cabinet: Board of Registration for Professional Engineer and Land Surveyors

201 KAR 18:150 (Standards of practice.) This administrative regulation was amended to conform to the drafting requirements of KRS 13A.222. Other amendments did not alter the meaning of the proposed amended regulation but were made to clarify intent and meaning.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: Identification and Listing of Hazardous Waste

401 KAR 31:040 (Lists of hazardous wastes.) On November 1, the regulation was amended to include the following language: "The listing of wastes K064, K065, K066, K088, and K090 as hazardous wastes shall become applicable to persons who generate or manage such wastes six (6) months after the effective date of this regulation." On November 2, on a motion to reconsider, the Subcommittee approved an amendment offered by the agency to insert the following language on page 12 between lines 4 and 5: "K091 Emission control dust or sludge from ferrochromium production. (T)". The amendment made on November 1 was further amended by adding K091 to the list of wastes.

Department for Surface Mining Reclamation and Enforcement: Permits

405 KAR 8:010 (General provisions for permits.) The amendment made to this regulation deleted Section 22(2)(a)4 relating to waivers. The regulation as amended was approved without objection.

Education and Humanities Cabinet: State Board for Elementary and Secondary Education: Department of Education: Office of School Administration and Finance: School Terms, Attendance and Operation

702 KAR 7:030 (Census.) This regulation was amended by deleting the new language in Section 1 and inserting in lieu thereof the following: "The census shall be taken as provided by KRS 159.250."

Office of Instruction: Student Services

704 KAR 7:090 (Homeless children education program.) This regulation was amended to correct language which had been approved by the State Board but was not included in the original filing. The amendments were as follows: Section 3 was amended by deleting the "'s" on the word "student's"; by inserting after the word "resides" the words "with his or her" and deleting the comma; and by deleting the word "and" following the word "residence" and in front of the word "shall".

Public Protection and Regulation Cabinet: Department of Financial Institutions: Division of Securities: Securities

808 KAR 10:040 (Dishonest or unethical conduct defined.) This regulation was amended to provide the appropriate statutory citation; to delete words that did not conform to the drafting requirements of KRS 13A.222; and to replace words with words used in the statute in order to eliminate any misunderstanding and to make categories in the regulation reflect those in the statute.

Cabinet for Human Resources: Department for Health Services: Communicable Diseases

902 KAR 2:020 (Reportable diseases.) One of the amendments proposed by the agency would have permitted all reports of sexually transmitted diseases to be identified by name. A representative of the Kentucky Hospital Association stated that, because of questions of liability, the language relating to reports should be mandatory if the cabinet wants that information. It was explained to Subcommittee members that permissive language could result in liability to a hospital since the law would not mandate the requirement that reports be identified with names. In addition, a request was made to amend the regulation to specify the specific risk factors on which the agency wanted information.

Additional objections were made to language in various subsections that permitted the Commissioner to designate diseases as reportable upon his determination, but without requiring the amendment of the applicable regulation or the listing of such diseases in the regulation.

This administrative regulation was amended as follows: (1) Section 2, subsections (1), (2) and (3) were amended to delete language that would permit the designation of reportable diseases without the amendment of the applicable regulation; (2) Section 2, subsection (4) was amended to specify the contents of reports of: (a) sexually transmitted diseases, (b) human immunodeficiency virus (HIV), and (c) acquired immune deficiency syndrome (AIDS); (d) Identification of reports of HIV and chicken pox shall not be identified by name; (3) to specify the risk factors that shall, if known, be included in the report of AIDS and HIV.

Senator Huff requested that his objection to the sections, and amendment of sections, relating to reports and the information required be placed on record.

902 KAR 2:040 (Surveillance and screening of carriers and selected groups.) Section 1 of this regulation was amended as follows: (1) to delete the word "Asiatic" in order to include all forms of cholera; (2) to delete language that would include all diseases with a carrier state posing a threat to the community rather than requiring: (a) a specific listing of such diseases in this regulation; and (b) the amendment of the regulation when additional diseases were included; (3) to provide a cross reference to a related regulation.

902 KAR 2:060 (Immunization schedules.) Section 1 of this regulation was amended as follows: (1) to delete language permitting the use of an immunization schedule without specifying the schedule in the regulation; (2) to make grammatical changes required by other amendments; and (3) to specify the immunization schedule. Section 2 was amended as follows: (1) to make a grammatical change to correct the reference to a disease; and (2) to add a statement of the dosage required by students entering the sixth grade. Section 3 was amended to make a grammatical change to correct the reference to a disease.

902 KAR 2:080 (Sexually transmitted diseases.) This regulation was amended as follows: (1) Sections 2 and 4 were amended to conform to the drafting requirements of KRS 13A.222; (2) Section 1, subsection (2), was amended to delete language that would permit the designation of diseases transmissible by sexual contact and of public health importance without including such diseases in an administrative regulation; (3) Section 1, subsection (2), was amended to provide an additional category of sexually transmitted diseases. After this amendment the two categories of such diseases are: sexually transmitted diseases and sexually transmitted diseases for which a treatment exists to render them noninfectious; (4) Section 2 was amended to change language to accord with the new definition; (5) Sections 2 and 3 were amended to restrict mandatory examination, testing, treatment, and investigation to sexually transmitted diseases for which a treatment to render them noninfectious exists. These amendments were considered necessary since there is no compulsory examination, testing, treatment, and investigation for AIDS and HIV, and since there is no treatment to render these diseases noninfectious.

Maternal and Child Health

902 KAR 4:100 (Maternal and child health services.) Section 2 was amended to conform with the drafting requirements of KRS 13A.222.

Department for Mental Health and Mental Retardation Services: Institutional Care

908 KAR 3:060 ("Means Test" pursuant to the "Patient Liability Act of 1978.") This regulation was amended to revise the income tables in order to conform to federal requirements.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

General Government Cabinet: Board of Pharmacy

201 KAR 2:121 (Repeal of regulations.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:044 (Taking of migratory wildlife.)
301 KAR 2:140 (Seasons for wild turkey.)

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: Identification and Listing of Hazardous Waste

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

401 KAR 31:160 (Appendix on basis for listing hazardous waste.)

401 KAR 31:170 (Appendix on hazardous constituents.)

Standards for Owners and Operators of Hazardous Waste Storage, Treatment and Disposal Facilities

401 KAR 34:350 (Treatment, storage and disposal of nerve agents.)

Hazardous Waste Permitting Process
401 KAR 38:190 (Specific Part B requirements for incinerators.)

Corrections Cabinet: Office of the Secretary
501 KAR 6:030 (Kentucky State Reformatory.
501 KAR 6:040 (Kentucky State Penitentiary.
501 KAR 6:060 (Northpoint Training Center.

Education and Humanities Cabinet: State Board for Elementary and Secondary Education: Department of Education: Office of School Administration and Finance: Buildings and Grounds
702 KAR 4:050 (Building sites; inspection, approval.)
Office of Instruction: Teacher Certification
704 KAR 20:005 (Kentucky standards for preparation-certification of professional school personnel program approval.
704 KAR 20:100 (Administrators and supervisors.
704 KAR 20:130 (Guidance counselors.
704 KAR 20:530 (Guidance counselor, provisional and standard certificates.
704 KAR 20:540 (Professional certificate for administrator of pupil personnel services.
704 KAR 20:560 (Master of arts in teaching.

Cabinet for Human Resources: Department for Health Services: Communicable Diseases
902 KAR 2:011 (Repeal of 902 KAR 2:010.)
902 KAR 2:090 (Tuberculosis testing.)

Department for Mental Health and Mental Retardation Services: Institutional Care
908 KAR 3:150 (Policies and procedures of Western State Hospital VOLTA program.)

The following regulations were deferred at the promulgating agency's request:

Department of Personnel: Personnel Department; Classified
These regulations were deferred until the December meeting in order to permit Subcommittee and Department staff to work out necessary amendments.
101 KAR 2:006 (Repeal of previous regulations.)
101 KAR 2:020 (Classification plan.)
101 KAR 2:030 (Compensation plan.)
101 KAR 2:040 (Applications and examinations.)
101 KAR 2:050 (Registers.)
101 KAR 2:060 (Certification and selection of eligibles.)
101 KAR 2:070 (Types of appointments and detail to special duty.)
101 KAR 2:090 (Service regulations.)

Labor Cabinet: Department of Workplace Standards: Occupational Safety and Health
803 KAR 2:300 (Adoption of 29 CFR Part 1910.)
803 KAR 2:301 (Adoption of 29 CFR Part 1910.)
803 KAR 2:302 (Adoption of 29 CFR Part 1910.)
803 KAR 2:303 (Adoption of 29 CFR Part 1910.)
803 KAR 2:304 (Adoption of 29 CFR Part 1910.)
803 KAR 2:305 (Adoption of 29 CFR Part 1910.)
803 KAR 2:306 (Adoption of 29 CFR Part 1910.)
803 KAR 2:307 (Adoption of 29 CFR Part 1910.)
803 KAR 2:308 (Adoption of 29 CFR Part 1910.)
803 KAR 2:309 (Adoption of 29 CFR Part 1910.)
803 KAR 2:310 (Adoption of 29 CFR Part 1910.)
803 KAR 2:311 (Adoption of 29 CFR Part 1910.)
803 KAR 2:313 (Adoption of 29 CFR Part 1910.)
803 KAR 2:314 (Adoption of 29 CFR Part 1910.)
803 KAR 2:315 (Adoption of 29 CFR Part 1910.)
803 KAR 2:316 (Adoption of 29 CFR Part 1910.)
803 KAR 2:317 (Adoption of 29 CFR Part 1910.)
803 KAR 2:318 (Adoption of 29 CFR Part 1910.)
803 KAR 2:319 (Adoption of 29 CFR Part 1910.)
803 KAR 2:320 (Adoption of 29 CFR Part 1910.)
803 KAR 2:400 (Adoption of 29 CFR Part 1926.)
803 KAR 2:403 (Adoption of 29 CFR Part 1926.)
803 KAR 2:404 (Adoption of 29 CFR Part 1926.)
803 KAR 2:405 (Adoption of 29 CFR Part 1926.)
803 KAR 2:406 (Adoption of 29 CFR Part 1926.)
803 KAR 2:409 (Adoption of 29 CFR Part 1926.)
803 KAR 2:410 (Adoption of 29 CFR Part 1926.)
803 KAR 2:411 (Adoption of 29 CFR Part 1926.)
803 KAR 2:413 (Adoption of 29 CFR Part 1926.)
803 KAR 2:414 (Adoption of 29 CFR Part 1926.)
803 KAR 2:416 (Adoption of 29 CFR Part 1926.)
803 KAR 2:418 (Adoption of 29 CFR Part 1926.)
803 KAR 2:420 (Adoption of 29 CFR Part 1926.)
803 KAR 2:421 (Adoption of 29 CFR Part 1926.)
803 KAR 2:500 (Adoption of 29 CFR Parts 1915, 1917, 1918 and 1919, maritime employment.
803 KAR 2:600 (Adoption of 29 CFR Part 1928.)

The following regulations were withdrawn from consideration:

These regulations were withdrawn because the approval required by KRS Chapter 18A before they were filed with the Legislative Research Commission was not obtained.
Department of Personnel: Classified
101 KAR 2:100 (Leave regulations.)
101 KAR 2:150 (State safety program.)
101 KAR 2:160 (Kentucky employee assistance program.)

Department of Personnel; Unclassified
101 KAR 3:006 (Repeal of previous regulation.)
101 KAR 3:040 (Unclassified service; classification and compensation plans.)
101 KAR 3:050 (Unclassified service; promotion, transfer and disciplinary actions.)

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 11 a.m. until December 11, 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 JUDICIARY
Meeting of October 17, 1989

The Interim Joint Committee on Judiciary met on Tuesday, October 17, 1989, at 1:30 p.m., in Room 327 of the Capitol, and submits this report:

The Interim Joint Committee on Judiciary determined that the following regulations complied with KRS Chapter 13A:

501 KAR 6:020 & E. Corrections Policies and Procedures
501 KAR 6:030. Kentucky State Reformatory
501 KAR 6:120. Blackburn Correctional Complex

INTERIM JOINT COMMITTEE ON LABOR & INDUSTRY
Meeting of October 27, 1989

The Interim Joint Committee on Labor and Industry met on October 27, 1989, and submits this report:

The Committee determined that the following administrative regulations complied with KRS Chapter 13A:

803 KAR 25:100 - Workers' Compensation Rehabilitation
903 KAR 5:010 - Unemployment Insurance
903 KAR 5:030 - Unemployment Insurance
903 KAR 5:080 - Unemployment Insurance
903 KAR 5:130 - Unemployment Insurance
903 KAR 5:150 - Unemployment Insurance
903 KAR 5:300 - Unemployment Insurance
903 KAR 5:310 - Unemployment Insurance
903 KAR 5:320 - Unemployment Insurance
903 KAR 5:330 - Unemployment Insurance
903 KAR 5:340 - Unemployment Insurance
903 KAR 5:350 - Unemployment Insurance
903 KAR 5:360 - Unemployment Insurance
903 KAR 5:370 - Unemployment Insurance
903 KAR 5:380 - Unemployment Insurance

INTERIM JOINT COMMITTEE ON HEALTH & WELFARE
Meeting of October 28, 1989

The Interim Joint Committee on Health and Welfare met on Wednesday, October 18, 1989, but took no action on the following regulations:

902 KAR 20:280 & E
907 KAR 1:013 & E
907 KAR 1:036 & E
908 KAR 3:080
908 KAR 3:120

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates.....F2

KRS Index.....F8

Subject Index to Volume 16.....F14

LOCATOR INDEX -- EFFECTIVE DATES

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

VOLUME 15

Regulation	15 Ky.R. Page No.	Effective Date
201 KAR 14:051	2465	9-2-89
704 KAR 20:550	2465	

VOLUME 16

Emergency Regulation	16 Ky.R. Page No.	Effective Date
101 KAR 2:100E	1122	11-13-89
101 KAR 3:010E	1126	11-13-89
201 KAR 10:010E	1131	10-31-89
201 KAR 10:030E	1131	10-31-89
201 KAR 10:040E	1133	10-31-89
201 KAR 10:060E	1134	10-31-89
200 KAR 17:010E	116	6-15-89
Replaced	341	8-22-89
301 KAR 2:044E	531	8-21-89
301 KAR 2:220E	1134	10-13-89
405 KAR 8:010E	321	8-10-89
405 KAR 10:200E	732	9-27-89
501 KAR 6:020E	532	8-21-89
Replaced	435	10-17-89
502 KAR 45:010E	119	6-28-89
Replaced	536	9-19-89
502 KAR 45:125E	119	6-28-89
Replaced	286	9-19-89
702 KAR 5:010E	334	7-17-89
Replaced	538	10-8-89
702 KAR 5:030E	334	7-17-89
Replaced	198	10-8-89
702 KAR 5:080E	335	7-17-89
Replaced	200	10-8-89
705 KAR 5:130E	338	8-9-89
709 KAR 1:060E	340	8-9-89
Replaced	224	10-8-89
902 KAR 20:280E	120	6-22-89
Replaced	755	10-18-89
903 KAR 5:270E	124	6-22-89
Replaced	237	9-21-89
904 KAR 2:006E	124	7-14-89
Replaced	238	9-20-89
904 KAR 2:016E	736	10-6-89
904 KAR 2:025E	741	10-9-89
904 KAR 2:055E	1139	10-31-89
904 KAR 2:116E	1142	10-26-89
907 KAR 1:004E	127	7-14-89
Replaced	252	9-20-89
Resubmitted	1144	11-2-89
907 KAR 1:012E	135	7-14-89
Replaced	260	9-20-89
Resubmitted	1155	10-26-89
907 KAR 1:013E	136	7-14-89
Replaced	558	10-18-89
907 KAR 1:022E	138	7-14-89
Replaced	264	9-20-89
907 KAR 1:026E	141	7-14-89
Replaced	267	9-20-89
907 KAR 1:027E	142	7-14-89
Replaced	269	9-20-89
907 KAR 1:031E	144	7-14-89
Replaced	270	9-20-89
907 KAR 1:036E	146	7-14-89
Replaced	561	10-18-89
907 KAR 1:045E	153	7-14-89
Replaced	280	9-20-89
907 KAR 1:055E	154	7-14-89
Replaced	281	9-20-89
907 KAR 1:450E	156	7-14-89
Replaced	551	9-20-89

Regulation	16 Ky.R. Page No.	Effective Date
1 KAR 4:005		
Amended	788	
101 KAR 1:325		
Amended	372	10-11-89
101 KAR 2:006	673	
101 KAR 2:020		
Amended	568	
101 KAR 2:030		
Amended	569	
101 KAR 2:040		
Amended	573	
101 KAR 2:050		
Amended	575	
101 KAR 2:060		
Amended	577	
101 KAR 2:070		
Amended	579	
101 KAR 2:090		
Amended	581	
101 KAR 2:100		
Amended	582	
Withdrawn		11-2-89
Amended	1208	
101 KAR 2:150		
Amended	586	
Withdrawn		11-2-89
Amended	1213	
101 KAR 2:160		
Amended	587	
Withdrawn		11-2-89
Amended	1214	
101 KAR 3:006	673	
Withdrawn		11-2-89
Resubmitted	1287	
101 KAR 3:010		
Amended	1215	

Regulation	16 Ky.R. Page No.	Effective Date
101 KAR 3:040		
Amended	588	
Withdrawn		11-2-89
Amended	1219	
101 KAR 3:050		
Amended	590	
Withdrawn		11-2-89
Amended	1221	
103 KAR 43:310	674	
As Amended	1157	
200 KAR 1:020		
Amended	373	10-11-89
200 KAR 5:020	500	
As Amended	745	10-11-89
200 KAR 17:010	89	
As Amended	341	8-22-89
201 KAR 2:010		
Amended	791	
201 KAR 2:015		
Amended	791	
201 KAR 2:020		
Amended	793	
201 KAR 2:030		
Amended	794	
201 KAR 2:040		
Amended	795	
201 KAR 2:080		
Amended	796	
201 KAR 2:121	674	
201 KAR 2:130		
Repealed	92	9-2-89
201 KAR 2:131	92	9-2-89
201 KAR 2:165		
Amended	797	
201 KAR 2:175		
Amended	798	
201 KAR 2:190		
Amended	799	
201 KAR 8:015		
Amended	376	
As Amended	745	10-13-89
201 KAR 9:016		
Amended	1223	
201 KAR 9:018		
Amended	1224	
201 KAR 9:021		
Amended	1225	
201 KAR 9:031		
Amended	1228	
201 KAR 9:041		
Amended	1229	
201 KAR 9:081	1230	
201 KAR 10:010		
Amended	1234	
201 KAR 10:030		
Amended	1234	
201 KAR 10:040		
Amended	1236	
201 KAR 10:060		
Amended	1237	
201 KAR 18:040		
Amended	1237	
201 KAR 18:150		
Amended	592	
As Amended	1157	
201 KAR 21:041		
Amended	44	
As Amended	344	9-2-89
201 KAR 21:070	93	9-2-89
201 KAR 21:075	94	
As Amended	345	
As Amended	535	10-8-89
201 KAR 21:080	95	9-2-89
201 KAR 21:085	96	
As Amended	346	9-2-89
201 KAR 21:090	97	
As Amended	347	9-2-89
201 KAR 24:040	501	
As Amended	746	10-13-89
301 KAR 1:122		
Amended	377	11-4-89
301 KAR 1:130		
Amended	46	8-23-89
301 KAR 1:200		
Amended	800	
301 KAR 2:044		
Amended	594	
301 KAR 2:140		
Amended	596	
301 KAR 2:220		
Amended	801	
301 KAR 3:080		
Amended	807	
401 KAR 4:120		
Repealed	503	11-4-89
401 KAR 4:125	503	11-4-89
401 KAR 5:005		
Amended	599	
Amended	1191	
401 KAR 5:010		
Amended	603	
Amended	1193	
401 KAR 5:026		
Amended	809	
401 KAR 5:029		
Amended	833	
401 KAR 5:031		
Amended	838	
401 KAR 5:085		
Amended	609	
Amended	1196	
401 KAR 6:300		
Amended	613	
401 KAR 31:010		
Amended	378	
401 KAR 31:040		
Amended	389	
Amended	761	
As Amended	1159	
401 KAR 31:160		
Amended	402	
401 KAR 31:170		
Amended	405	
401 KAR 34:350	512	
Amended	772	
401 KAR 38:190		
Amended	419	
Amended	773	
401 KAR 39:010		
Amended	616	
401 KAR 39:020		
Amended	617	
Amended	1198	
401 KAR 39:030		
Amended	619	
Amended	1199	
401 KAR 39:060		
Amended	624	
Amended	1200	
401 KAR 39:070		
Amended	625	
Amended	1200	
401 KAR 39:080		
Amended	628	

Regulation	16 Ky.R. Page No.	Effective Date
401 KAR 39:090		
Amended	629	
Amended	1201	
401 KAR 39:110		
Amended	631	
401 KAR 39:120		
Amended	632	
Amended	1202	
401 KAR 50:036		
Amended	635	
405 KAR 8:010		
Amended	421	
Amended	775	
As Amended	1170	
405 KAR 10:200		
Amended	641	
Amended	1202	
501 KAR 6:020		
Amended	47	9-2-89
Amended	183	9-19-89
Amended	435	10-17-89
501 KAR 6:030		
Amended	49	9-2-89
Amended	184	9-19-89
Amended	437	10-17-89
Amended	646	
Amended	852	
501 KAR 6:040		
Amended	50	9-2-89
Amended	648	
501 KAR 6:050		
Amended	186	9-19-89
Amended	1238	
501 KAR 6:060		
Amended	188	9-19-89
Amended	649	
501 KAR 6:120		
Amended	439	10-17-89
Amended	854	
501 KAR 6:130		
Amended	189	9-19-89
501 KAR 6:140		
Amended	1240	
502 KAR 45:010		
Amended	190	
As Amended	536	9-19-89
502 KAR 45:125	286	9-19-89
600 KAR 3:020	286	
As Amended	536	10-4-89
600 KAR 4:020		
Amended	856	
601 KAR 1:005		
Amended	1242	
601 KAR 1:025		
Amended	651	
Amended	1206	
601 KAR 1:045		
Amended	191	10-4-89
601 KAR 1:090		
Amended	441	11-4-89
601 KAR 9:045		
Amended	1244	
601 KAR 12:040		
Amended	860	
601 KAR 35:060		
Amended	1246	
602 KAR 20:010		
Repealed	748	11-4-89
602 KAR 20:020		
Amended	443	
As Amended	748	11-4-89
602 KAR 20:025		
Repealed	748	11-4-89
602 KAR 20:030		
Amended	445	11-4-89
602 KAR 20:040		
Amended	446	11-4-89
602 KAR 20:050		
Repealed	748	11-4-89
602 KAR 20:060		
Repealed	748	11-4-89
602 KAR 20:070		
Repealed	748	11-4-89
602 KAR 20:080		
Repealed	748	11-4-89
602 KAR 20:100		
Amended	861	
602 KAR 20:110		
Amended	447	11-4-89
602 KAR 20:120	514	11-4-89
603 KAR 5:050		
Amended	862	
603 KAR 5:070		
Amended	863	
603 KAR 5:077		
Amended	1247	
603 KAR 5:110		
Amended	192	10-4-89
603 KAR 5:230		
Amended	448	11-4-89
701 KAR 5:060		
Amended	652	Died*
*(Statement of Consideration not properly signed & filed within 15 days of hearing)		
Amended	1248	
702 KAR 1:115		
Amended	195	
As Amended	537	10-8-89
702 KAR 3:135		
Amended	1251	
702 KAR 4:050		
Amended	52	9-2-89
Amended	655	
702 KAR 4:110	98	
As Amended	348	9-2-89
702 KAR 4:120	99	
As Amended	348	9-2-89
702 KAR 4:130	99	
As Amended	349	9-2-89
702 KAR 5:010		
Amended	197	
As Amended	538	10-8-89
702 KAR 5:030		
Amended	198	10-8-89
702 KAR 5:080		
Amended	200	10-8-89
702 KAR 6:010		
Amended	1252	
702 KAR 6:030		
Amended	1252	
702 KAR 6:040		
Amended	1253	
702 KAR 6:070		
Amended	1254	
702 KAR 6:081	1287	
702 KAR 7:030		
Amended	657	
As Amended	1182	
702 KAR 7:065		
Amended	1255	
702 KAR 7:070		
Amended	1256	
704 KAR 3:005		
Amended	1257	

Regulation	16 Ky.R. Page No.	Effective Date
704 KAR 3:290		
Repealed	288	10-8-89
704 KAR 3:291	288	10-8-89
704 KAR 3:292		
Amended	203	10-8-89
704 KAR 3:325		
Amended	1261	
704 KAR 3:335		
Amended	1264	
704 KAR 3:365	288	10-8-89
704 KAR 7:090	676	
As Amended	1183	
704 KAR 10:022		
Amended	206	10-8-89
704 KAR 20:005		
Amended	207	10-8-89
Amended	658	
704 KAR 20:070		
Amended	208	
As Amended	539	10-8-89
704 KAR 20:080		
Amended	209	11-4-89
704 KAR 20:100		
Amended	659	
704 KAR 20:130		
Amended	661	
704 KAR 20:135		
Amended	210	10-8-89
704 KAR 20:290		
Amended	211	10-8-89
704 KAR 20:530	678	
704 KAR 20:540	679	
704 KAR 20:560	680	
705 KAR 5:130		
Amended	212	10-8-89
706 KAR 1:060	1081	
706 KAR 1:070	1085	
706 KAR 1:080	1087	
706 KAR 1:090	1089	
706 KAR 1:100	1092	
706 KAR 1:110	1094	
707 KAR 1:051		
Amended	214	11-4-89
707 KAR 1:140	289	11-4-89
709 KAR 1:050		
Repealed	291	10-8-89
709 KAR 1:051	291	10-8-89
709 KAR 1:060		
Amended	224	10-8-89
709 KAR 1:080		
Amended	225	10-8-89
709 KAR 1:090	292	10-8-89
709 KAR 1:100	294	
As Amended	539	10-8-89
709 KAR 1:110	297	
As Amended	542	10-8-89
709 KAR 1:120	298	10-8-89
709 KAR 1:130	299	10-8-89
709 KAR 1:140	300	10-8-89
755 KAR 1:010	1288	
755 KAR 1:020	1289	
755 KAR 1:030	1290	
755 KAR 1:040	1292	
755 KAR 1:050	1293	
755 KAR 1:060	1294	
801 KAR 1:005		
Amended	485	
801 KAR 1:010		
Amended	486	
801 KAR 1:020		
Amended	487	
801 KAR 1:030		
Repealed	486	10-6-89
801 KAR 1:040		
Amended	488	
801 KAR 1:050		
Repealed	486	10-6-89
801 KAR 1:060		
Repealed	486	10-6-89
801 KAR 1:100		
Repealed	486	10-6-89
803 KAR 2:020		
Amended	227	9-21-89
803 KAR 2:031	1097	
803 KAR 2:300	682	
803 KAR 2:301	683	
803 KAR 2:302	684	
803 KAR 2:303	685	
803 KAR 2:304	686	
803 KAR 2:305	686	
803 KAR 2:306	687	
803 KAR 2:307	689	
803 KAR 2:308	690	
803 KAR 2:309	692	
803 KAR 2:310	693	
803 KAR 2:311	694	
803 KAR 2:312	1098	
803 KAR 2:313	695	
803 KAR 2:314	696	
803 KAR 2:315	697	
803 KAR 2:316	698	
803 KAR 2:317	699	
803 KAR 2:318	700	
803 KAR 2:319	700	
803 KAR 2:320	701	
803 KAR 2:400	703	
803 KAR 2:401	1098	
803 KAR 2:402	1099	
803 KAR 2:403	704	
803 KAR 2:404	705	
803 KAR 2:405	710	
803 KAR 2:406	710	
803 KAR 2:407	1100	
803 KAR 2:408	1101	
803 KAR 2:409	711	
803 KAR 2:410	712	
803 KAR 2:411	713	
803 KAR 2:412	1102	
803 KAR 2:413	714	
803 KAR 2:414	715	
803 KAR 2:415	1102	
803 KAR 2:416	716	
803 KAR 2:417	1103	
803 KAR 2:418	716	
803 KAR 2:419	1104	
803 KAR 2:420	717	
803 KAR 2:421	719	
803 KAR 2:422	1105	
803 KAR 2:423	1106	
803 KAR 2:500	720	
803 KAR 2:600	721	
803 KAR 25:090		
Amended	31	
As Amended	542	10-10-89
803 KAR 25:100		
Amended	31	
As Amended	749	10-27-89
804 KAR 9:010		
Amended	488	
As Amended	754	10-13-89
806 KAR 14:120	100	Died*

*(Statement of consideration not filed within 15 days of hearing)

Regulation	16 Ky.R. Page No.	Effective Date
806 KAR 14:121	516	11-4-89
808 KAR 10:040		
Amended	662	
As Amended	1185	
808 KAR 10:210		
Amended	53	
As Amended	543	10-8-89
810 KAR 1:003		
Amended	866	
810 KAR 1:020		
Amended	870	
815 KAR 7:010		
Amended	873	
815 KAR 7:020		
Amended	881	
815 KAR 7:060		
Amended	887	
815 KAR 7:080		
Amended	1267	
815 KAR 10:030	1295	
815 KAR 10:035	1298	
815 KAR 15:010		
Amended	55	8-22-89
815 KAR 15:020		
Amended	59	
As Amended	353	8-22-89
815 KAR 15:030		
Amended	64	8-22-89
815 KAR 15:040		
Amended	67	8-22-89
815 KAR 15:085	104	
Withdrawn		8-29-89
815 KAR 20:020		
Amended	901	
815 KAR 20:070		
Amended	1270	
815 KAR 20:090		
Amended	72	8-22-89
Amended	1272	
815 KAR 20:110		
Amended	1277	
815 KAR 20:120		
Amended	904	
815 KAR 20:130		
Amended	911	
815 KAR 25:010		
Amended	76	
As Amended	357	8-22-89
900 KAR 2:010		
Amended	915	
900 KAR 2:020		
Amended	917	
900 KAR 2:030		
Amended	918	
900 KAR 2:040		
Amended	924	
901 KAR 5:031		
Amended	930	
901 KAR 5:040		
Amended	931	
901 KAR 5:070		
Amended	932	
901 KAR 5:080		
Amended	932	
901 KAR 5:090		
Amended	933	
901 KAR 5:100		
Amended	935	
902 KAR 2:011	722	
902 KAR 2:020		
Amended	663	
As Amended	1185	
902 KAR 2:040		
Amended	665	
As Amended	1187	
902 KAR 2:060		
Amended	666	
As Amended	1187	
902 KAR 2:080		
Amended	667	
As Amended	1188	
902 KAR 2:090		
Amended	669	
902 KAR 4:040		
Amended	234	
As Amended	544	9-20-89
902 KAR 4:060		
Repealed	554	9-20-89
902 KAR 4:100	722	
902 KAR 7:010		
Amended	936	
902 KAR 20:009		
Amended	939	
902 KAR 20:012		
Amended	957	
902 KAR 20:021		
Amended	958	
902 KAR 20:031		
Amended	966	
902 KAR 20:046		
Amended	972	
902 KAR 20:054		
Amended	980	
902 KAR 20:056		
Amended	982	
902 KAR 20:058		
Amended	989	
902 KAR 20:072		
Amended	992	
902 KAR 20:078		
Amended	994	
902 KAR 20:081		
Amended	998	
902 KAR 20:091		
Amended	1001	
902 KAR 20:101		
Amended	1003	
902 KAR 20:145		
Amended	1010	
902 KAR 20:150		
Amended	1012	
902 KAR 20:155		
Amended	1016	
902 KAR 20:170		
Amended	1018	
902 KAR 20:180		
Amended	1024	
902 KAR 20:190		
Amended	1028	
902 KAR 20:280	302	
Amended	554	
As Amended	755	10-18-89
902 KAR 45:010		
Amended	1031	
903 KAR 5:010		
Amended	490	
As Amended	759	10-27-89
903 KAR 5:030		
Amended	490	10-27-89
903 KAR 5:080		
Amended	491	10-27-89
903 KAR 5:130		
Amended	492	10-27-89

Regulation	16 Ky.R. Page No.	Effective Date
903 KAR 5:150		
Amended	496	10-27-89
903 KAR 5:260		
Repealed	519	10-27-89
903 KAR 5:270		
Amended	237	9-21-89
903 KAR 5:280		
Repealed	492	10-27-89
903 KAR 5:300		
Amended	496	10-27-89
903 KAR 5:310	519	10-27-89
903 KAR 5:320	520	10-27-89
903 KAR 5:330	520	10-27-89
903 KAR 5:340	521	10-27-89
903 KAR 5:350	522	10-27-89
903 KAR 5:360	523	10-27-89
903 KAR 5:370	523	10-27-89
903 KAR 5:380	524	10-27-89
904 KAR 2:006		
Amended	238	9-20-89
904 KAR 2:016		
Amended	1033	
904 KAR 2:022		
Amended	1278	
904 KAR 2:025	1106	
904 KAR 2:035		
Amended	241	9-20-89
904 KAR 2:040		
Amended	243	9-20-89
904 KAR 2:046		
Amended	244	9-20-89
904 KAR 2:055		
Amended	1039	
904 KAR 2:060		
Amended	246	9-20-89
904 KAR 2:116		
Amended	1042	
904 KAR 3:080		
Amended	246	9-20-89
905 KAR 1:005		
Amended	1046	
905 KAR 1:065		
Amended	1050	
905 KAR 1:071		
Amended	1056	
905 KAR 1:110		
Amended	1059	
905 KAR 1:120		
Amended	1063	
905 KAR 1:140		
Amended	1067	
905 KAR 2:070	105	
As Amended	366	8-16-89
905 KAR 6:010		
Amended	248	
As Amended	547	9-20-89
905 KAR 6:020		
Repealed	308	9-20-89
905 KAR 6:030		
Repealed	309	9-20-89
905 KAR 6:040	306	
As Amended	551	9-20-89
905 KAR 6:050	308	9-20-89
905 KAR 6:060	309	9-20-89
907 KAR 1:004		
Amended	252	9-20-89
Amended	1068	
907 KAR 1:012		
Amended	260	9-20-89
Amended	1079	
907 KAR 1:013		
Amended	261	
Amended	558	10-18-89
907 KAR 1:022		
Amended	264	9-20-89
907 KAR 1:026		
Amended	267	9-20-89
907 KAR 1:027		
Amended	269	9-20-89
907 KAR 1:031		
Amended	270	9-20-89
907 KAR 1:036		
Amended	272	
Amended	561	10-18-89
907 KAR 1:045		
Amended	280	9-20-89
907 KAR 1:054		
Amended	85	
As Amended	369	8-16-89
907 KAR 1:055		
Amended	281	9-20-89
907 KAR 1:402		
Amended	283	9-20-89
907 KAR 1:414		
Amended	1284	
907 KAR 1:416		
Amended	284	9-20-89
907 KAR 1:432		
Amended	87	8-16-89
907 KAR 1:450	311	
As Amended	551	9-20-89
907 KAR 1:474	313	9-20-89
908 KAR 3:060		
Amended	670	
As Amended	1189	
908 KAR 3:080		
Amended	497	10-18-89
Amended	1285	
908 KAR 3:120		
Amended	498	
908 KAR 3:150		
Amended	672	

KRS INDEX

KRS Section	Regulation
16.040	502 KAR 45:010
16.050	502 KAR 45:010
16.080	502 KAR 45:125
18A.005	101 KAR 2:020
	101 KAR 2:050
	101 KAR 2:070
18A.025	101 KAR 2:160
18A.030	101 KAR 2:030
	101 KAR 2:040
	101 KAR 2:060
	101 KAR 2:090
	101 KAR 2:100
	101 KAR 2:150
	101 KAR 2:160
18A.075	101 KAR 1:325
18A.0751	101 KAR 1:325
18A.110	101 KAR 2:006
	101 KAR 2:020
	101 KAR 2:030
	101 KAR 2:040
	101 KAR 2:050
	101 KAR 2:060
	101 KAR 2:070
	101 KAR 2:090
	101 KAR 2:100
	101 KAR 2:150
	101 KAR 2:160
18A.111	101 KAR 1:325
18A.115	101 KAR 2:070
18A.120	101 KAR 2:040
	101 KAR 2:050
	101 KAR 2:070
18A.155	101 KAR 2:150
	101 KAR 2:160
	101 KAR 3:006
	101 KAR 3:010
	101 KAR 3:040
	101 KAR 3:050
18A.165	101 KAR 2:030
	101 KAR 2:060
Chapter 45	200 KAR 5:020
45.350-45.359	1 KAR 4:005
Chapter 45A	200 KAR 5:020
45A.350	702 KAR 3:135
Chapter 61	200 KAR 1:020
61.874	601 KAR 12:040
Chapter 96A	600 KAR 4:020
Chapter 121	801 KAR 1:005
	801 KAR 1:010
	801 KAR 1:020
	801 KAR 1:040
Chapter 138	601 KAR 1:005
138.210	103 KAR 43:310
138.349	103 KAR 43:310
138.351	103 KAR 43:310
146.220	401 KAR 4:125
146.270	401 KAR 4:125
146.290	401 KAR 4:125
146.310	401 KAR 4:125
146.350	401 KAR 4:125
150.010	301 KAR 1:122
	301 KAR 1:130
	301 KAR 1:200
	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 3:080

KRS Section	Regulation
150.015	301 KAR 2:044
	301 KAR 2:220
	301 KAR 3:080
150.025	301 KAR 1:122
	301 KAR 1:130
	301 KAR 1:200
	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 3:080
150.092	301 KAR 2:140
150.170	301 KAR 1:130
	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
150.175	301 KAR 1:122
	301 KAR 1:130
	301 KAR 2:140
	301 KAR 2:220
150.176	301 KAR 2:140
150.180	301 KAR 1:122
150.190	301 KAR 1:122
150.235	301 KAR 2:220
150.240	301 KAR 2:220
150.300	301 KAR 2:044
150.305	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
150.320	301 KAR 2:044
	301 KAR 2:140
150.330	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
150.340	301 KAR 1:130
	301 KAR 2:044
	301 KAR 2:220
150.360	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
	301 KAR 3:080
150.365	301 KAR 2:140
150.390	301 KAR 2:140
150.450	301 KAR 1:130
150.470	301 KAR 1:200
150.600	301 KAR 2:220
	301 KAR 3:080
150.603	301 KAR 2:044
	301 KAR 2:220
150.630	301 KAR 2:220
150.990	301 KAR 1:122
	301 KAR 1:200
	301 KAR 2:220
156.010	702 KAR 6:010
	702 KAR 6:030
	702 KAR 6:040
	702 KAR 6:070
	702 KAR 6:081
	704 KAR 3:291
	704 KAR 3:292
	704 KAR 3:365
156.031	702 KAR 6:010
	702 KAR 6:030
	702 KAR 6:040
	702 KAR 6:070
	702 KAR 6:081
	704 KAR 3:291
	704 KAR 3:335
	704 KAR 3:365
	704 KAR 7:090

KRS Section	Regulation
156.032	709 KAR 1:051
	709 KAR 1:090
	709 KAR 1:100
	709 KAR 1:110
	709 KAR 1:120
	709 KAR 1:130
	709 KAR 1:140
156.035	702 KAR 6:010
	702 KAR 6:030
	702 KAR 6:040
	702 KAR 6:070
	702 KAR 6:081
	704 KAR 3:291
	704 KAR 3:292
	704 KAR 3:335
	704 KAR 3:365
	704 KAR 7:090
	709 KAR 1:051
	709 KAR 1:090
	709 KAR 1:100
	709 KAR 1:110
	709 KAR 1:120
	709 KAR 1:130
	709 KAR 1:140
156.070	702 KAR 3:135
	702 KAR 7:065
	702 KAR 7:070
	704 KAR 3:292
	709 KAR 1:051
	709 KAR 1:090
	709 KAR 1:100
	709 KAR 1:110
	709 KAR 1:120
	709 KAR 1:130
	709 KAR 1:140
156.076	702 KAR 3:135
156.101	704 KAR 3:325
156.160	702 KAR 4:050
	702 KAR 4:110
	702 KAR 4:120
	702 KAR 4:130
	702 KAR 5:010
	702 KAR 5:030
	702 KAR 5:080
	704 KAR 10:022
156.200	702 KAR 6:070
157.200-157.290	707 KAR 1:051
	707 KAR 1:140
157.360	707 KAR 1:051
	707 KAR 1:140
157.620	702 KAR 4:110
	702 KAR 4:120
	702 KAR 4:130
158.035	902 KAR 2:060
158.037	902 KAR 2:090
158.650-158.750	701 KAR 5:060
	704 KAR 3:005
159.170	702 KAR 7:030
159.240	702 KAR 7:030
159.250	702 KAR 7:030
159.260	702 KAR 7:030
160.155-160.157	709 KAR 1:080
160.180	702 KAR 1:115
161.020	704 KAR 20:005
	704 KAR 20:070
	704 KAR 20:080
	704 KAR 20:100
	704 KAR 20:130
	704 KAR 20:135
	704 KAR 20:290
	704 KAR 20:530
	704 KAR 20:540
	704 KAR 20:560

KRS Section	Regulation
161.025	704 KAR 20:005
	704 KAR 20:070
	704 KAR 20:080
	704 KAR 20:100
	704 KAR 20:130
	704 KAR 20:135
	704 KAR 20:290
	704 KAR 20:530
	704 KAR 20:540
	704 KAR 20:560
161.030	704 KAR 20:005
	704 KAR 20:070
	704 KAR 20:080
	704 KAR 20:100
	704 KAR 20:130
	704 KAR 20:135
	704 KAR 20:290
	704 KAR 20:530
	704 KAR 20:540
	704 KAR 20:560
	707 KAR 1:140
162.010	702 KAR 4:050
162.060	702 KAR 4:050
	702 KAR 4:110
	702 KAR 4:120
	702 KAR 4:130
163.030	705 KAR 5:130
	709 KAR 1:060
163.120	706 KAR 1:060
163.130	706 KAR 1:060
163.140	706 KAR 1:060
	706 KAR 1:070
	706 KAR 1:080
	706 KAR 1:090
	706 KAR 1:100
	706 KAR 1:110
163.160	706 KAR 1:060
	706 KAR 1:110
164A.410	755 KAR 1:040
164A.560	755 KAR 1:010
	755 KAR 1:030
	755 KAR 1:060
164A.570	755 KAR 1:020
164A.595	755 KAR 1:010
164A.605	755 KAR 1:050
Chapter 165A	201 KAR 24:040
Chapter 174	600 KAR 4:020
174.400-174.435	601 KAR 1:025
Chapter 176	600 KAR 3:020
	600 KAR 4:020
Chapter 177	600 KAR 3:020
	600 KAR 4:020
177.9771	601 KAR 35:060
	603 KAR 5:230
Chapter 183	600 KAR 4:020
183.090	602 KAR 20:020
	602 KAR 20:030
	602 KAR 20:040
	602 KAR 20:100
	602 KAR 20:110
	602 KAR 20:120
183.110	602 KAR 20:030
183.120	600 KAR 3:020
183.230	603 KAR 5:230
Chapter 186	601 KAR 9:045
189.222	603 KAR 5:070
189.231	603 KAR 5:077
189.270	603 KAR 5:110
189.337	603 KAR 5:050
189.540	702 KAR 5:010
	702 KAR 5:030
	702 KAR 5:080
194.030	902 KAR 4:100

KRS Section	Regulation
194.050	902 KAR 4:040
	904 KAR 2:116
	904 KAR 3:080
Chapter 196	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:120
	501 KAR 6:130
	501 KAR 6:140
Chapter 197	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:120
	501 KAR 6:130
	501 KAR 6:140
Chapter 198B	815 KAR 7:010
	815 KAR 7:020
	815 KAR 7:060
	815 KAR 7:080
	815 KAR 10:030
	815 KAR 10:035
199.011	905 KAR 1:005
	905 KAR 1:065
	905 KAR 1:110
	905 KAR 1:120
199.465	905 KAR 1:140
199.467	905 KAR 1:140
199.640	905 KAR 1:005
	905 KAR 1:065
	905 KAR 1:120
199.640-199.670	905 KAR 1:071
	905 KAR 1:110
199.650	905 KAR 1:005
	905 KAR 1:065
199.660	905 KAR 1:005
	905 KAR 1:065
199.670	905 KAR 1:005
	905 KAR 1:065
200.460	902 KAR 4:100
200.470	902 KAR 4:100
200.490	902 KAR 4:100
Chapter 202A	908 KAR 3:080
	908 KAR 3:120
	908 KAR 3:150
Chapter 202B	908 KAR 3:080
	908 KAR 3:120
	908 KAR 3:150
Chapter 205	904 KAR 2:022
205.010	904 KAR 2:006
205.170	904 KAR 2:060
205.200	904 KAR 2:006
	904 KAR 2:035
	904 KAR 2:040
	904 KAR 2:046
205.231	904 KAR 2:055
205.245	904 KAR 2:035
	904 KAR 2:046
205.520	904 KAR 2:035
	907 KAR 1:004
	907 KAR 1:012
	907 KAR 1:013
	907 KAR 1:022
	907 KAR 1:026
	907 KAR 1:027
	907 KAR 1:031
	907 KAR 1:036
	907 KAR 1:045
	907 KAR 1:054
	907 KAR 1:055

KRS Section	Regulation
205.520 (cont'd)	907 KAR 1:402
	907 KAR 1:414
	907 KAR 1:416
	907 KAR 1:432
	907 KAR 1:450
	907 KAR 1:474
205.715-205.800	904 KAR 2:025
Chapter 210	908 KAR 3:080
	908 KAR 3:120
	908 KAR 3:150
210.700-210.760	908 KAR 3:060
211.180	902 KAR 2:011
	902 KAR 2:020
	902 KAR 2:040
	902 KAR 2:060
	902 KAR 2:080
	902 KAR 2:090
	902 KAR 4:040
211.900	902 KAR 4:100
Chapter 213	901 KAR 5:031
	901 KAR 5:040
	901 KAR 5:070
	901 KAR 5:080
	901 KAR 5:090
	901 KAR 5:100
213.410	902 KAR 4:100
214.010	902 KAR 2:011
	902 KAR 2:020
	902 KAR 2:040
	902 KAR 2:080
214.020	902 KAR 2:011
	902 KAR 2:040
214.032	902 KAR 2:060
214.034	902 KAR 2:060
	902 KAR 2:090
214.036	902 KAR 2:060
214.155	902 KAR 4:100
214.160	902 KAR 2:080
	902 KAR 4:100
214.178	902 KAR 2:080
214.185	902 KAR 2:080
	902 KAR 4:100
214.420	902 KAR 2:080
215.520	902 KAR 2:090
216.537	900 KAR 2:010
216.540	900 KAR 2:010
216.550	900 KAR 2:030
	900 KAR 2:040
216.555	900 KAR 2:040
216.557	900 KAR 2:040
216.560	900 KAR 2:040
216.563	900 KAR 2:040
216.565	900 KAR 2:040
216.567	900 KAR 2:020
216.577	900 KAR 2:040
216.875	902 KAR 20:280
216.880	902 KAR 20:280
216.885	902 KAR 20:280
216B.010-216B.130	902 KAR 20:009
	902 KAR 20:012
	902 KAR 20:021
	902 KAR 20:031
	902 KAR 20:046
	902 KAR 20:078
	902 KAR 20:091
	902 KAR 20:101
	902 KAR 20:145
	902 KAR 20:155
	902 KAR 20:170

KRS Section	Regulation
216B.010-216B.131	902 KAR 20:054
	902 KAR 20:056
	902 KAR 20:058
	902 KAR 20:072
	902 KAR 20:081
	902 KAR 20:150
	902 KAR 20:180
	902 KAR 20:190
216B.400	902 KAR 20:012
216B.990	902 KAR 20:009
	902 KAR 20:012
	902 KAR 20:021
	902 KAR 20:031
	902 KAR 20:046
	902 KAR 20:054
	902 KAR 20:056
	902 KAR 20:058
	902 KAR 20:072
	902 KAR 20:078
	902 KAR 20:081
	902 KAR 20:091
	902 KAR 20:101
	902 KAR 20:145
	902 KAR 20:150
	902 KAR 20:155
	902 KAR 20:170
	902 KAR 20:180
	902 KAR 20:190
Chapter 217	201 KAR 2:121
	201 KAR 2:175
	201 KAR 2:190
217.005-217.215	902 KAR 45:010
217.819	201 KAR 2:131
217.992	902 KAR 45:010
219.011-219.081	902 KAR 7:010
219.991	902 KAR 7:010
Chapter 224	401 KAR 5:026
	401 KAR 5:029
	401 KAR 5:031
223.405	401 KAR 6:300
223.425	401 KAR 6:300
223.445	401 KAR 6:300
224.020	401 KAR 5:005
	401 KAR 5:085
224.032	401 KAR 5:010
224.033	401 KAR 5:005
	401 KAR 5:085
	401 KAR 34:350
	401 KAR 38:190
	401 KAR 39:010
	401 KAR 39:020
	401 KAR 39:030
	401 KAR 39:060
	401 KAR 39:070
	401 KAR 39:080
	401 KAR 39:090
	401 KAR 39:110
	401 KAR 39:120
224.034	401 KAR 5:085
224.036	401 KAR 38:190
224.045	401 KAR 4:125
224.060	401 KAR 5:005
	401 KAR 5:085
	401 KAR 34:350
224.071	401 KAR 34:350
	401 KAR 38:190
224.073	401 KAR 5:085
224.083	401 KAR 4:125
224.085	401 KAR 4:125
224.087	401 KAR 38:190
224.135	401 KAR 5:010
224.281	401 KAR 4:125
224.320	401 KAR 50:036
224.330	401 KAR 50:036
224.340	401 KAR 50:036
224.830-224.877	401 KAR 31:010
	401 KAR 31:040
	401 KAR 31:160
	401 KAR 31:170
	401 KAR 34:350
	401 KAR 38:190
	401 KAR 39:010
	401 KAR 39:080
	401 kAR 39:090
	401 KAR 39:110
224.864	401 KAR 39:020
	401 kAR 39:030
	401 KAR 39:060
	401 KAR 39:070
	401 KAR 39:120
224.866	401 KAR 39:020
	401 KAR 39:030
	401 KAR 39:060
	401 KAR 39:070
	401 KAR 39:120
224.871	401 KAR 39:020
	401 KAR 39:030
	401 KAR 39:060
	401 KAR 39:070
	401 KAR 39:120
224.994	401 KAR 31:010
	401 KAR 31:040
	401 KAR 31:160
	401 KAR 31:170
	401 KAR 34:350
	401 KAR 38:190
	401 KAR 39:010
	401 KAR 39:020
	401 KAR 39:080
	401 KAR 39:090
	401 KAR 39:110
	401 KAR 39:120
Chapter 224A	200 KAR 17:010
Chapter 227	815 KAR 10:030
	815 KAR 10:035
227.990	815 KAR 25:010
227.550-227.660	815 KAR 25:010
230.210-230.360	810 KAR 1:003
	810 KAR 1:020
Chapter 236	815 KAR 15:020
236.030	815 KAR 15:010
	815 KAR 15:030
	815 KAR 15:040
	815 KAR 15:085
236.210	815 KAR 15:085
241.060	804 KAR 9:010
241.065	804 KAR 9:010
241.075	804 KAR 9:010
243.030	804 KAR 9:010
273.405-273.453	905 KAR 6:010
273.410-273.453	905 KAR 6:050
273.410-273.468	905 KAR 6:060
273.446	1 KAR 4:005
273.451	905 KAR 6:040
273.453	1 KAR 4:005
Chapter 281	601 KAR 1:005
	601 KAR 1:045
	601 KAR 1:090
Chapter 292	808 KAR 10:040
292.500	808 KAR 10:210
Chapter 304	405 KAR 10:200
304.14-130	806 KAR 14:121
304.14-420-304.14-450	806 KAR 14:121
311.271	201 KAR 9:021

KRS Section	Regulation
311.530-311.620	201 KAR 9:016
	201 KAR 9:018
	201 KAR 9:021
	201 KAR 9:031
	201 KAR 9:041
	201 KAR 9:081
311.990	201 KAR 9:018
	201 KAR 9:021
	201 KAR 9:031
	201 KAR 9:041
	201 KAR 9:081
312.010	201 KAR 21:085
312.085	201 KAR 21:041
	201 KAR 21:085
	201 KAR 21:090
312.095	201 KAR 21:041
312.105	201 KAR 21:041
312.109	201 KAR 21:070
	201 KAR 21:080
	201 KAR 21:090
312.115	201 KAR 21:041
	201 KAR 21:070
312.200	201 KAR 21:075
313.010	201 KAR 8:015
Chapter 315	201 KAR 2:015
	201 KAR 2:020
	201 KAR 2:030
	201 KAR 2:040
	201 KAR 2:080
	201 KAR 2:165
	201 KAR 2:175
	201 KAR 2:190
315.050	201 KAR 2:010
Chapter 318	815 KAR 20:020
	815 KAR 20:070
	815 KAR 20:090
	815 KAR 20:110
	815 KAR 20:120
	815 KAR 20:130
322.020	201 KAR 18:150
322.040	201 KAR 18:040
322.090	201 KAR 18:040
	201 KAR 18:150
322.100	201 KAR 18:040
322.110	201 KAR 18:040
322.120	201 KAR 18:040
322.140	201 KAR 18:040
322.150	201 KAR 18:040
322.160	201 KAR 18:040
322.420	201 KAR 18:040
323A.010	201 KAR 10:030
323A.020	201 KAR 10:030
	201 KAR 10:060
323A.040	201 KAR 10:030
	201 KAR 10:040
323A.050	201 KAR 10:040
323A.060	201 KAR 10:040
	201 KAR 10:060
323A.070	201 KAR 10:040
323A.080	201 KAR 10:030
323A.100	201 KAR 10:030
	201 KAR 10:060
323A.110	201 KAR 10:030
323A.120	201 KAR 10:030
323A.210	201 KAR 10:010
	201 KAR 10:030
333.130	902 KAR 2:020
Chapter 338	803 KAR 2:020
	803 KAR 2:031
	803 KAR 2:300
	803 KAR 2:301
	803 KAR 2:302
	803 KAR 2:303
Chapter 338 (cont'd)	803 KAR 2:304
	803 KAR 2:305
	803 KAR 2:306
	803 KAR 2:307
	803 KAR 2:308
	803 KAR 2:309
	803 KAR 2:310
	803 KAR 2:311
	803 KAR 2:312
	803 KAR 2:313
	803 KAR 2:314
	803 KAR 2:315
	803 KAR 2:316
	803 KAR 2:317
	803 KAR 2:318
	803 KAR 2:319
	803 KAR 2:320
	803 KAR 2:400
	803 KAR 2:401
	803 KAR 2:402
	803 KAR 2:403
	803 KAR 2:404
	803 KAR 2:405
	803 KAR 2:406
	803 KAR 2:407
	803 KAR 2:408
	803 KAR 2:409
	803 KAR 2:410
	803 KAR 2:411
	803 KAR 2:412
	803 KAR 2:413
	803 KAR 2:414
	803 KAR 2:415
	803 KAR 2:416
	803 KAR 2:417
	803 KAR 2:418
	803 KAR 2:419
	803 KAR 2:420
	803 KAR 2:421
	803 KAR 2:422
	803 KAR 2:423
	803 KAR 2:500
	803 KAR 2:600
341.050	903 KAR 5:350
341.055	903 KAR 5:350
341.070	903 KAR 5:340
	903 KAR 5:370
	903 KAR 5:380
341.190	903 KAR 5:010
	903 KAR 5:300
341.250	903 KAR 5:340
341.260	903 KAR 5:030
341.262	903 KAR 5:300
	903 KAR 5:310
341.272	903 KAR 5:370
341.300	903 KAR 5:030
	903 KAR 5:310
341.370	903 KAR 5:080
	903 KAR 5:310
341.380	903 KAR 5:270
341.390	903 KAR 5:360
341.410	903 KAR 5:150
341.430	903 KAR 5:130
	903 KAR 5:310
341.440	903 KAR 5:130
341.450	903 KAR 5:130
	903 KAR 5:310
341.530	903 KAR 5:080
341.540	903 KAR 5:380
341.570	903 KAR 5:130
341.820	903 KAR 5:300
350.020	405 KAR 8:010
	405 KAR 10:200

KRS Section	Regulation
350.028	405 KAR 10:200
350.055	405 KAR 8:010
350.060	405 KAR 8:010
	405 KAR 10:200
350.062	405 KAR 10:200
350.064	405 KAR 10:200
350.068	405 KAR 10:200
350.070	405 KAR 8:010
350.085	405 KAR 8:010
	405 KAR 10:200
350.090	405 KAR 8:010
350.093	405 KAR 10:200
350.095	405 KAR 10:200
350.100	405 KAR 10:200
350.110	405 KAR 10:200
350.113	405 KAR 10:200
350.130	405 KAR 8:010
	405 KAR 10:200
350.135	405 KAR 8:010
	405 KAR 10:200
350.151	405 KAR 10:200
350.260	405 KAR 10:200
350.450	405 KAR 8:010
350.465	405 KAR 8:010
	405 KAR 10:200
350.700	405 KAR 10:200
350.705	405 KAR 10:200
350.710	405 KAR 10:200
350.715	405 KRA 10:200
350.720	405 KAR 10:200
350.725	405 KAR 10:200
350.730	405 KAR 10:200
350.735	405 KAR 10:200
350.740	405 KAR 10:200
350.745	405 KAR 10:200
350.750	405 KAR 10:200
350.755	405 KAR 10:200
350.990	405 KAR 10:200
403.210	904 KAR 2:025
403.215	904 KAR 2:025
Chapter 405	904 KAR 2:022
405.405-405.530	904 KAR 2:025
424.260	702 KAR 3:135
Chapter 439	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:050
	501 KAR 6:060
	501 KAR 6:120
	501 KAR 6:130
	501 KAR 6:140
510.010-510.140	902 KAR 20:012
530.050	904 KAR 2:025
605.090	905 KAR 1:120
635.060	905 KAR 1:120
7 CFR 210.11	702 KAR 6:070
27 CFR 55	405 KAR 8:010
29 CFR 1910	803 KAR 2:020
	803 KAR 2:300
	803 KAR 2:301
	803 KAR 2:302
	803 KAR 2:303
	803 KAR 2:304
	803 KAR 2:305
	803 KAR 2:306
	803 KAR 2:307
	803 KAR 2:308
	803 KAR 2:309
	803 KAR 2:310
	803 KAR 2:311
	803 KAR 2:312
	803 KAR 2:313
	803 KAR 2:314

KRS Section	Regulation
29 CFR 1910 (cont'd)	803 KAR 2:315
	803 KAR 2:316
	803 KAR 2:317
	803 KAR 2:318
	803 KAR 2:319
	803 KAR 2:320
30 CFR 77.1301	405 KAR 8:010
34 CFR	704 KAR 3:365
34 CFR 361	706 KAR 1:060
40 CFR 136	401 KAR 5:029
45 CFR 301-307	904 KAR 2:022
49 CFR	601 KAR 1:005
	601 KAR 1:025
29 USC 722	706 KAR 1:110
42 USC 1751-1789	702 KAR 6:010
	702 KAR 6:030
	702 KAR 6:040
	702 KAR 6:070
	702 KAR 6:081
42 USC §11432	704 KAR 7:090
42 USC 602	905 KAR 2:070
P.L. 97-35	904 KAR 2:116
Title XIX, SS Act	907 KAR 1:402
	907 KAR 1:414
	907 KAR 1:416
	907 KAR 1:432
	907 KAR 1:474

SUBJECT INDEX

ADMINISTRATION, FINANCE (EDUCATION)
Buildings, Grounds
  Sites, inspection, approval; 702 KAR 4:050
Terms, Attendance, Operation
  Census; 702 KAR 7:030

ADULT, VOCATIONAL EDUCATION, & VOCATIONAL REHAB
Vocational Education
  Management of state-operated schools; 705 KAR Chapter 5
Programs
  Adult education; 709 KAR Chapter 1

AERONAUTICS
Airport Safety
  Heliports, public; 602 KAR 20:100
  Standards; 602 KAR 20:030
  Landing area designation; 602 KAR 20:020
  Public use airport; 602 KAR 20:120
  Restricted use airport; 602 KAR 20:040
  Restricted use heliport; 602 KAR 20:110

AGRICULTURE
Referendums; 302 KAR Chapter 1

AIR QUALITY
Administrative Procedures
  Fees; 401 KAR 50:036

AIRPORTS
(See Aeronautics)

ALCOHOLIC BEVERAGE CONTROL
Quotas
  Retail liquor license limit; 804 KAR 9:010

AMBULATORY CARE, SURGICAL CENTERS, AIR AMBULANCE
(See Health Services)

ARCHITECTS
(See Landscape Architects)

BANKS
(See Financial Institutions)

BIRTH CENTERS, ALTERNATIVE
(See Health Services)

BLOCK GRANTS
Oversight procedures; 1 KAR 4:005

BOILERS, PRESSURE VESSELS
(See Housing, Buildings and Construction)

CHIROPRACTIC EXAMINERS
Course work, 2 year education; 201 KAR 21:090
Licensing
  Examination requirements; 201 KAR 21:070
  Fees, standards; 201 KAR 21:041
Peer review; 201 KAR 21:075
Preceptorship program; 201 KAR 21:085
Rescission rights; 201 KAR 21:080

COMMUNICABLE DISEASES
(See Health Services)

CORRECTIONS
Bell County Forestry Camp; 501 KAR 6:140
Blackburn Correctional Complex; 501 KAR 6:120
Kentucky State Penitentiary; 501 KAR 6:040
Kentucky State Reformatory; 501 KAR 6:030
Luther Luckett Complex; 501 KAR 6:050
Northpoint Training Center; 501 KAR 6:060
Policies and procedures; 501 KAR 6:020 & E
Western Kentucky Farm Center; 501 KAR 6:130

COSMETICS
(See Health Services or Hairdressers)

DAY CARE
(See Social Services)

DENTISTRY
Laboratory, technician registration; 201 KAR 8:015

EDUCATION AND HUMANITIES
Adult, Vocational Education & Vocational Rehab
  Programs
    Adult education; 709 KAR Chapter 1
  Vocational Education
    State-operated schools; 705 KAR Chapter 5
Elementary and Secondary
  Exceptional children; 707 KAR Chapter 1
  Instruction
    Educational Act; 704 KAR Chapter 10
    Instructional services; 704 KAR Chapter 3
    Student services; 704 KAR Chapter 7
    Teacher certification; 704 KAR Chapter 20
  Local Services
    Administration; 702 KAR Chapter 1
    Buildings & grounds; 702 KAR Chapter 4
    Food service; 702 KAR Chapter 6
    Pupil transportation; 702 KAR Chapter 5
    School district Finance; 702 KAR Chapter 3
    Term/attendance/operation; 702 KAR Chapter 7
School Administration, Finance
  Buildings, grounds; 702 KAR Chapter 4
  Terms, attendance, operation; 702 KAR Chapter 7
Superintendent's Office
  Code of ethics, state testing; 701 KAR 5:060
Vocational Rehabilitation
  Administration; 706 KAR Chapter 1

ELECTIONS
(See Registry of Election Finance)

ELEMENTARY AND SECONDARY EDUCATION
Exceptional children; 707 KAR Chapter 1
Instruction
  Education Act; 704 KAR Chapter 10
  Instructional services; 704 KAR Chapter 3
  Teacher certification; 704 KAR Chapter 20
Local Services
  Administration; 702 KAR Chapter 1
  Buildings and grounds; 702 KAR Chapter 4
  Pupil transportation; 702 KAR Chapter 5

EMPLOYEES, STATE
(See also Personnel)
Personnel Rules
  Board; 101 KAR Chapter 1
  Classified; 101 KAR Chapter 2
  Unclassified; 101 KAR Chapter 3

EMPLOYMENT SERVICES
Unemployment Insurance
Appeals; 903 KAR 5:130
Contract construction rates; 903 KAR 5:370
Coverage volunteer election; 903 KAR 5:340
Determination defined; 903 KAR 5:150
Due dates; 903 KAR 5:310
Employer account application; 903 KAR 5:010
Employer contributions; 903 KAR 5:030
Employment, covered; 903 KAR 5:350
Fraud disqualifications; 903 KAR 5:320
Levy notice release; 903 KAR 5:330
Maximum weekly benefit rate; 903 KAR 5:270 & E
Pension deduction limitation; 903 KAR 5:360
Protesting claims, time; 903 KAR 5:080
Reports, due dates; 903 KAR 5:300
Successorship; 903 KAR 5:380

ENGINEERS, LAND SURVEYORS
Fees; 201 KAR 18:040
Standards of practice; 201 KAR 18:150

EXCEPTIONAL CHILDREN/HANDICAPPED PROGRAMS
Exceptional children program; 707 KAR 1:051
Teacher classroom assignment; 707 KAR 1:140

FINANCE, ADMINISTRATION
Infrastructure Authority
Revolving fund guidelines; 200 KAR 17:010 & E
Public records; 200 KAR Chapter 1
Purchasing; 200 KAR Chapter 5

FINANCIAL INSTITUTIONS
Securities
Conduct definition; 808 KAR 10:040
Registration exemptions
Federal regulation D; 808 KAR 10:210

FISH AND WILDLIFE RESOURCES
Fish
Angling seasons, limits; 301 KAR 1:200
Live bait; 301 KAR 1:130
Live fish; 301 KAR 1:122
Game
Migratory birds; 301 KAR 2:220 & E
Migratory wildlife; 301 KAR 2:044 & E
Wild turkey; 301 KAR 2:140
Hunting and Fishing
Lead shot prohibition; 301 KAR 3:080

GRAVES
(See Transportation)

GROUP HOMES
(See Health Services)

HEALTH ECONOMICS CONTROL
Pediatric extended care; 902 KAR 20:280 & E

HEALTH SERVICES
Accommodations, Public
Hotel, motel code; 902 KAR 7:010
Communicable Diseases
Carriers surveillance, screening; 902 KAR 2:040
Immunization schedule; 902 KAR 2:060
Repealer; 902 KAR 2:011
Reportable diseases; 902 KAR 2:020
Sexually transmitted; 902 KAR 2:080
Tuberculosis testing; 902 KAR 2:090
Food and Cosmetics
Definitions; 902 KAR 45:010
Health Services and Facilities
Air ambulance; 902 KAR 20:155
Alternative birth centers; 902 KAR 20:150

HEALTH SERVICES (cont'd)
Ambulatory care clinics; 902 KAR 20:072
Ambulatory surgical center; 902 KAR 20:101
Health maintenance organizations; 902 KAR 20:054
Home health agencies; 902 KAR 20:081
Hospital examination services; 902 KAR 20:012
Hospitals; 902 KAR 20:009
Group homes; 902 KAR 20:078
Intermediate care; 902 KAR 20:056
Mental health, retardation centers; 902 KAR 20:091
Nursing homes; 902 KAR 20:046
Personal care homes; 902 KAR 20:031
Primary care centers; 902 KAR 20:058
Psychiatric hospitals; 902 KAR 20:170; 902 KAR 20:180
Rehabilitation agency; 902 KAR 20:190
Rural health clinics; 902 KAR 20:145
Skilled nursing; 902 KAR 20:021
Maternal, Child Health
Food program for WIC; 902 KAR 4:040
Services; 902 KAR 4:100

HIGHWAYS
Traffic
Bridge weight limits, coal roads; 603 KAR 5:230
Frankfort prohibitions; 603 KAR 5:077
Mobile homes moving permit; 603 KAR 5:110
Traffic control devices; 603 KAR 5:050
Truck dimension limits; 603 KAR 5:070

HOME HEALTH AGENCIES
(See Health Services)

HOSPITALS
(See Health Services)

HOTELS, MOTELS
(See Health Services)

HOUSING, BUILDINGS AND CONSTRUCTION
Boilers, Pressure Vessels
Administrative procedures; 815 KAR 15:020
Change of license holders; 815 KAR 15:085
Definitions; 815 KAR 15:010
General requirements; 815 KAR 15:030
Power boilers; 815 KAR 15:040
Building Code
Administration, enforcement; 815 KAR 7:010
Code; 815 KAR 7:020
New construction, disabled; 815 KAR 7:060
Sprinkler contractors; 815 KAR 7:080
Mobile Homes, Recreational Vehicles
Mobile homes; 815 KAR 25:010
Plumbing
Fixtures; 815 KAR 20:070
Parts, materials list; 815 KAR 20:020
Sewers, storm water piping; 815 KAR 20:130
Soil, waste, vent systems; 815 KAR 20:090
Traps, clean-outs; 815 KAR 20:110
Water supply, distribution; 815 KAR 20:120
Standards of Safety
Fire prevention code; 815 KAR 10:030
Standards of safety; 815 KAR 10:035

HUMAN RESOURCES
Administrative Services
Vital statistics; 901 KAR Chapter 5
Employment Services
Unemployment insurance; 903 KAR Chapter 5
Health Services
Accommodations, public; 902 KAR Chapter 7
Communicable diseases; 902 KAR Chapter 2

HUMAN RESOURCES (cont'd)
Health facilities, services; 902 KAR Chapter 20
Maternal, child health; 902 KAR Chapter 4
Food, cosmetics; 902 KAR Chapter 45
Long Term Care
Appeals; 900 KAR 2:020
Citations, violations; 900 KAR 2:040
Rating system; 900 KAR 2:030
Visitation; 900 KAR 2:010
Medicaid services; 907 KAR Chapter 1
Mental health, mental retardation
Institutional care; 908 KAR Chapter 3
Social Insurance
Public assistance; 904 KAR Chapter 2
Social Services
Child welfare; 905 KAR Chapter 1
Community action agencies; 905 KAR Chapter 6
Day care; 905 KAR Chapter 2

INFRASTRUCTURE AUTHORITY
(See Finance, Administration)

INSTITUTIONAL CARE
(See Mental Health, Mental Retardation Services)

INSTRUCTION (EDUCATION)
Educational Act
School standards; 704 KAR 10:022
Instructional services
Chapter 1, ESSIA migrant; 704 KAR 3:292
Chapter I complaint procedure; 704 KAR 3:365
Educational Improvement Act; 704 KAR 3:005
Hawkins/Stafford School Improvement Amendments, 1988; 704 KAR 3:335
Instructional Leadership Act; 704 KAR 3:325
Repealer; 704 KAR 3:291
Student Services
Homeless children; 704 KAR 7:090
Teacher Certification
Administrators, supervisors; 704 KAR 20:100
Early elementary certificate; 704 KAR 20:290
Guidance counselors; 704 KAR 20:130
Guidance counselor certificate; 704 KAR 20:530
High school certificates; 704 KAR 20:070
Kindergarten teachers; 704 KAR 20:135
Masters of art in teaching; 704 KAR 20:560
Middle grades certificate; 704 KAR 20:080
Program approval; 704 KAR 20:005
Pupil personnel services; 704 KAR 20:540

INSURANCE
Contracts
Readability, intelligibility; 806 KAR 14:121

INTERMEDIATE CARE
(See Health Services)

JAILS
(See Corrections)

JUSTICE
State Police
Candidate selection; 502 KAR Chapter 45

LABOR
Occupational safety; health; 803 KAR Chapter 2

LAND SURVEYORS
(See Engineers, Land Surveyors)

LANDSCAPE ARCHITECTS
Applications; 201 KAR 10:040 & E
Board duties; 201 KAR 10:010 & E
Code of ethics; 201 KAR 10:030 & E
Renewals; 201 KAR 10:060 & E

LEGISLATIVE RESEARCH COMMISSION
Block grants; 1 KAR Chapter 4

LOCAL SERVICES (EDUCATION)
(See School Administration, Finance)

LONG TERM CARE
(See Human Resources)

MEDICAID SERVICES
Dental services; 907 KAR 1:026 & E; 907 KAR 1:027 & E
Home, community based services; 907 KAR 1:432
Home health services; 907 KAR 1:031 & E
Hospital inaptient services; 907 KAR 1:012 & E; 907 KAR 1:013 & E
Incorporation by Reference
Dental services; 907 KAR 1:414
Durable medical equipment manual; 907 KAR 1:474
Pharmacy services manual; 907 KAR 1:416
Physican services manual; 907 KAR 1:402
Inpatient hospital services; 907 KAR 1:012 & E
Intermediate care services; 907 KAR 1:036 & E
Medically needy; 907 KAR 1:004 & E
Mental health centers; 907 KAR 1:045 & E
Nurse aide training; 907 KAR 1:450 & E
Primary care center; 907 KAR 1:054; 907 KAR 1:055 & E
Skilled nursing facilities; 907 AKR 1:022 & E

MEDICAL LICENSURE
Advertising; 201 KAR 9:018
Disciplinary proceedings; 201 KAR 9:081
Examinations; 201 KAR 9:031
Fee schedule; 201 KAR 9:041
Restrictions; 201 KAR 9:016
Schools; 201 KAR 9:021

MENTAL HEALTH, MENTAL RETARDATION SERVICES
(Also see Health Services)
Institutional Care
Hazelwood ICF-MR: 908 KAR 3:080
"Means test"; 908 KAR 3:060
Western State Hospital; 908 KAR 3:120
Western State Hospital VOLTA; 908 KAR 3:150

MINORITY AFFAIRS (TRANSPORTATION)
Enterprise program; 600 KAR 4:020

MOBILE HOMES
(See Housing, Buildings and Construction)

MOREHEAD STATE UNIVERSITY
Annual audit; 755 KAR 1:020
Bond issuance; 755 KAR 1:050
Financial management; 755 KAR 1:060
Fund acquisition, disbursement; 755 KAR 1:010
Property proceeds; 755 KAR 1:040
Purchasing, inventories; 755 KAR 1:030

MOTOR FUELS
(See Taxation)

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION
Environmental Protection
Air quality; 401 KAR Chapter 50
Waste management; 401 KAR Chapters 31 through 39
Water; 401 KAR Chapters 4, 5 and 6
Surface mining, reclamation; 405 KAR Chapters 8 through 10

NURSING
(See Health Services or Nursing)

NURSING HOMES
(See Health Services)

OCCUPATIONAL SAFETY, HEALTH
Repealer; 803 KAR 2:031
29 CFR Part 1910; 803 KAR 2:020; 803 KAR 2:300 through 803 KAR 2:320
29 CFR Part 1926; 803 KAR 2:400 through 803 KAR 2:423
29 CFR Parts 1915, 1917, 1918, 1919; 803 KAR 2:500
29 CFR Part 1928; 803 KAR 2:600

OCCUPATIONS, PROFESSIONS
Chiropractic examiners; 201 KAR Chapter 21
Dentistry; 201 KAR Chapter 8
Engineers, land surveyors; 201 KAR Chapter 18
Landscape architects; 201 KAR Chapter 10
Medical licensure; 201 KAR Chapter 9
Pharmacy; 201 KAR Chapter 2
Proprietary education; 201 KAR Chapter 24

PEDIATRICS
(See Health Economics Control)

PERSONNEL
(See also Employees, State)
Board
  Probationary periods; 101 KAR 1:325
Classified
  Application, examination; 101 KAR 2:040
  Appointments, special duty; 101 KAR 2:070
  Certification, selection, eligibles; 101 KAR 2:060
  Classification plan; 101 KAR 2:020
  Compensation plan; 101 KAR 2:030
  Eligibles; 101 KAR 2:060
  Employee assistance; 101 KAR 2:160
  Leave; 101 KAR 2:100 & E
  Registers; 101 KAR 2:050
  Repealer; 101 KAR 2:006
  Safety program; 101 KAR 2:150
  Service regulation; 101 KAR 2:090
Unclassified
  Classification, compensation; 101 KAR 3:040
  Leave; 101 KAR 3:100 & E
  Promotion, transfer, discipline; 101 KR 3:050
  Repealer; 101 KAR 3:006

PHARMACY, BOARD OF
Continuing education; 201 KAR 2:015
Examinations; 201 KAR 2:020
Intern registration; 201 KAR 2:040
License, temporary; 201 KAR 2:030
Prescriptions, emergency; 201 KAR 2:175
Prescription transfer; 201 KR 2:190
Prescription substitute; 201 KAR 2:080
Prescription transfer; 201 KAR 2:165
Reciprocity; 201 KAR 2:030
Repealer; 201 KAR 2:121; 201 KAR 2:131
Schools; 201 KAR 2:010

PLUMBING
(See Housing, Buildings and Construction)

PROGRAMS (VOCATIONAL EDUCATION)
Adult Education
  Academic progress standard; 709 KAR 1:060 & E
  Community education; 709 KAR 1:080
  English literacy program; 709 KAR 1:110
  Migrant farmworker, immigrant; 709 KAR 1:130
  Repealer; 709 KAR 1:051
  Reporting requirements; 709 KAR 1:140
  Section 322 applications; 709 KAR 1:090
  Section 353 applications; 709 KAR 1:100
  Workplace literacy program; 709 KAR 1:120

PROPRIETARY EDUCATION
Hearing procedures; 201 KAR 24:040

PSYCHIATRIC HOSPITALS
(See Health Services)

PUBLIC PROTECTION, REGULATION
Alcoholic Beverage Control
  Quotas; 804 KAR Chapter 9
Election Finance, Registry of
  Report forms; 801 KAR Chapter 1
Financial Institutions
  Securities; 808 KAR Chapter 10
Housing, Buildings & Construction
  Boilers, pressure vessels; 815 KAR Chapter 15
  Building code; 815 KAR Chapter 7
  Plumbing; 815 KAR Chapter 20
  Mobile homes, RVs; 815 KAR Chapter 25
Insurance
  Contracts; 806 KAR Chapter 14

PUBLIC RECORDS
Acess to; 200 KAR 1:020

PURCHASING
Policies and procedures manual; 200 KAR 5:020

RACING
Thoroughbred; 810 KAR Chapter 1

RECLAMATION, ENFORCEMENT
Bonds, Insurance
  Bond pool; 405 KAR 10:200 & E
Permits
  General provisions; 405 KAR 8:010 & E

REFERENDUMS (AGRICULTURE)
Burley tobacco, 302 KAR 1:020 & E

REGISTRY OF ELECTION FINANCE
Report Forms
  Campaign treasurer appointment; 801 KAR 1:005
  Finance statement; 801 KAR 1:010
  Political committee registration; 801 KAR 1:040
  Receipts, expenditures; 801 KAR 1:020

REVENUE
(See also Taxation)
Excise Tax, Selective
  Motor fuels; 103 KAR Chapter 43

RURAL HEALTH CLINICS
(See Health Services)

SCHOOL ADMINISTRATION, FINANCE
Administration
  District board training; 702 KAR 1:115
Buildings and Grounds
  Building sites; 702 KAR 4:050
  Financial budget increase; 702 KAR 4:130
  Program space; 702 KAR 4:110
  Square foot costs, budget; 702 KAR 4:120
Food Service Programs
  Funds, reports; 702 KAR 6:070
  Local responsibility; 702 KAR 6:010
  Personnel; 702 KAR 6:040
  Principal responsibility; 702 KAR 6:030
  Repealer; 702 KAR 6:081
School District Finance
  Bidding procedures; 702 KAR 3:135
Pupil Transportation
  Bus drivers; 702 KAR 5:080 & E
  Division responsibility; 702 KAR 5:010 & E
  Superintendent responsibility; 702 KAR 5:030 & E

SCHOOL ADMINISTRATION, FINANCE (cont'd)
Terms, Attendance, Operation
Interscholastic Athletics
Agent; 702 KAR 7:065
Eligibility, requirements; 702 KAR 7:070

SEXUALLY TRANSMITTED DISEASES
(See Health Services)

SOCIAL INSURANCE
Food Stamp Program
Contingency plan; 904 KAR 3:080
Public Assistance
Adverse action; 904 KAR 2:046
AFDC, need and amount; 904 KAR 2:016 & E
AFDC, technical requirements; 904 KAR 2:006 & E
Child support guidelines; 904 KAR 2:025 & E
Child support process; 904 KAR 2:022
Eligibility; 904 KAR 2:040
Hearings, appeals; 904 KAR 2:055 & E
LIHEAP; 904 KAR 2:116 & E
Oaths & affirmations; 904 KAR 2:060
Right to apply; 904 KAR 2:035

SOCIAL SERVICES
Child Welfare
Adjudicated delinquents; 905 KAR 1:120
Child care institutions; 905 KAR 1:065
Child placing agencies; 905 KAR 1:005
Foster care, adoption assistance; 905 KAR 1:140
Foster children group homes; 905 KAR 1:071
Treatment-oriented care; 905 KAR 1:110
Community Action Agencies
Block grant audit; 905 KAR 6:060
Block grant program; 905 KAR 6:050
Funding, hearing termination; 905 KAR 6:040
Standards; 905 KAR 6:010
Day Care
Home care standards; 905 KAR 2:070

STATE POLICE
Candidate Selection
Definitions; 502 KAR 45:010 & E
Oath of office; 502 KAR 45:125 & E

SURFACE MINING
(See Reclamation)

TAXATION
Excise, Selective, Motor Fuels
Subjobber issuance, refund invoices; 103 KAR 43:310

THOROUGHBRED RACING
Hearings, reviews, appeals; 810 KAR 1:020
Licensing; 810 KAR 1:003

TOBACCO
(See Agriculture, Referendums)

TOURISM CABINET
Fish and Wildlife Resources
Fish; 301 KAR Chapter 1
Game; 301 KAR Chapter 2
Hunting, fishing; 301 KAR Chapter 3

TRANSPORTATION
Administration
Grave relocation; 600 KAR 3:020
Aeronautics
Airport safety; 602 KAR Chapter 20
Highways
Traffic; 603 KAR Chapter 5

TRANSPORTATION (cont'd)
Minority affairs; 600 KAR Chapter 4
Vehicle Regulation
Driver's license; 601 KAR Chapter 12
Motor Carriers; 601 KAR Chapter 1

VEHICLE REGULATION
Coal Transportation
Decals; 601 KAR 35:060
Driver's License
Driving history; 601 KAR 12:040
Motor Carriers
Certificate filing application; 601 KAR 1:045
Exempted commodities; 601 KAR 1:090
Hazardous materials, permit; 601 KAR 1:025
Safety regulations; 601 KAR 1:005
Motor Vehicle Tax
Rental vehicle fleets; 601 KAR 9:045

VITAL STATISTICS
Birth, death verification; 901 KAR 5:040
Birth certificate amended; 901 KAR 5:070
Burial, transportation & disinterment; 901 KAR 5:090
Cadavers; 901 KAR 5:100
Death, delayed registration; 902 KAR 5:080
Definitions; 901 KAR 5:031

VOCATIONAL EDUCATION
State-operated Schools
Adult attendance policies; 705 KAR 5:130 & E

VOCATIONAL REHABILITATION
Appeal procedures; 706 KAR 1:110
Carl D. Perkins Center; 706 KAR 1:090
Colonial Inn Facility; 706 KAR 1:100
General provisions; 706 KAR 1:060
Rehab. engineering services; 706 KAR 1:080
Services, selection & need; 706 KAR 1:070

WASTE MANAGEMENT
Hazardous Waste; Fees
Delisting, exemption; 401 KAR 39:020
Generator registration; 401 KAR 39:010
Marketer, burner registration; 401 KAR 39:110
Modification fees; 401 KAR 39:070
Part A application; 401 KAR 39:120
Part B treatment, storage, disposal; 401 KAR 39:030
Postclosure; 401 KAR 39:090
Recycling; 401 KAR 39:080
Short-term fees; 401 KAR 39:060
Hazardous Waste; Identification, Listing
Appendix, basis for listing; 401 KAR 31:160
Appendix, hazardous constituents; 401 KAR 31:170
Lists; 401 KAR 31:040
General provisions; 401 KAR 31:010
Hazardous Waste; Permitting Process
Incinerators, Part B; 401 KAR 38:190
Hazardous Waste Storage, Treatment, Disposal Facilities; Owner and Operator Standards
Nerve agents; 401 KAR 34:350

WATER
Quality
Classification; 401 KAR 5:026
Discharge permit, variance fees; 401 KAR 5:085
General provisions; 401 KAR 5:029
Operator's certification; 401 KAR 5:010
Permits to discharge; 401 KAR 5:005
Surface water standards; 401 KAR 5:031
Resources
Wild rivers administration; 401 KAR 4:125
Sanitary Engineering
Water well drillers; 401 KAR 6:300