Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 16, NUMBER 7
MONDAY, JANUARY 1, 1990

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

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommitte is **tentatively** scheduled on January 3, 1990. See **tentative** agenda on page 1319-1320 in this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1989 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.**

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 2, Kentucky Register, page 318 (short form: 2 Ky.R. 318).

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 REGISTER OF KENTUCKY
(ISSN 0096-1493)
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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $48 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year. Second class postage paid at Frankfort, Kentucky.
POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA
January 3, 1990
(Rm. 107, Capitol Annex @ 10 a.m.)

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101 KAR 2:150. State safety program.
101 KAR 2:160. Kentucky employee assistance program.

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101 KAR 3:006. Repeal of 101 KAR 3:030.
101 KAR 3:010 & E. Leave regulations for unclassified service.
101 KAR 3:040. Unclassified service; classification and compensation plans.
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201 KAR 2:030. Reciprocity; temporary license. (Deferred from December meeting)
(Agency requests deferral)

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201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances.
201 KAR 9:018. Physician advertising. (Withdrawn by Agency on December 18, 1989)
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.
201 KAR 9:031. Examinations.
201 KAR 9:041. Fee schedule.
201 KAR 9:081. Disciplinary proceedings.

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201 KAR 10:010 & E. Duties of board.
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601 KAR 35:060. Extended weight coal haul decals.

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603 KAR 5:070. Truck dimension limits. (Amended After Hearing)
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Department of Education

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Office of School Administration and Finance

School District Finance
702 KAR 3:135. Bidding procedures.

Food Service Programs
702 KAR 6:010. Local responsibilities.
702 KAR 6:030. Principal's responsibilities.
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702 KAR 7:065 & E. Designation of agent to manage high school interscholastic athletics.
702 KAR 7:070. Interscholastic athletic eligibility and requirements; redshirting prohibited.

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704 KAR 3:005. Educational Improvement Act. (Withdrawn by Agency on December 15, 1989)
704 KAR 3:325. Effective Instructional Leadership Act.
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.
Teacher Certification
704 KAR 20:550. Professional school certificate for college faculty. (Deferred from July, 1989) (Agency Requests Deferral to February Meeting)

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Board of Regents
755 KAR 1:010. Acquisition and disbursement of funds.
755 KAR 1:020. Annual audits.
755 KAR 1:030. Purchasing, inventories, sales of surplus property, bidding procedures.
755 KAR 1:040. Disposal of property proceeds, title.
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Office of Administrative Services

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Department for Social Insurance

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Department for Medicaid Services

Medicaid Services
907 KAR 1:414. Incorporation by reference of the dental services manual.

Department for Mental Health and Mental Retardation Services

Institutional Care
908 KAR 3:080. Policies and procedures of Hazelwood ICF-MR.

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
200 KAR 16:020E

This emergency administrative regulation defines additional terms and words which shall be interpreted and applied in a uniform manner, used in the participation agreements, forms, notices and other instruments related to the administration of the Kentucky Educational Savings Plan Trust. It has been determined that an emergency exists that requires immediate action to permit a participant to immediately establish a savings plan for a beneficiary's higher education costs, or to permit a participant to enroll a beneficiary in a savings plan before a beneficiary obtains age 15, or to allow a beneficiary attending a Kentucky institution to receive the maximum benefit from the earnings on the endowment fund. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 28, 1989.

WALLACE G. WILKINSON, Governor
L. ROGERS WELLS, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:020E. Definitions.

RELATES TO: KRS 164A.305
STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10)
EFFECTIVE: November 28, 1989
NECESSITY AND FUNCTION: KRS 164A.325(10) provides that the Kentucky Educational Savings Plan Trust Board shall have the power to promulgate rules and regulations to carry out and effectuate the purposes and objectives of the Kentucky Educational Savings Plan Trust (KRS Chapter 164A). KRS 164A.305(1) through (16) defines certain terms and words, but does not define other terms and words which are necessary to carry out and accomplish the purposes, objectives and provisions of KRS Chapter 164A ("Act"). This regulation defines additional terms and words which shall be interpreted and applied in a uniform manner, used in the participation agreement forms, notices and other instruments related to the administration of the trust.

Section 1. Definitions. The language used in the administration of the trust contains some legal and technical terms as well as everyday terms which, of necessity, have specialized meaning. The following definitions shall be controlling in the interpretation and application of these words and phrases, except where the context clearly requires another interpretation:

(1) The term "academic period" shall mean one-eighth (1/8) of eight (8) semesters or one-twelfth (1/12) of twelve (12) quarters at a four (4) year institution; one-fourth (1/4) of four (4) semesters or one-sixth (1/6) quarters at a two (2) year institution; or an equivalent period for a vocational technical institution.

(2) The word "account" shall denote the account in the program fund established and maintained under the trust for a beneficiary;

(3) The term "account balance" shall mean the fair market value of an account as of the accounting date;

(4) The term "accounting date" shall mean the date, not later than the last business day of each quarter as determined by the program administrator;

(5) The term "administrative fee" shall mean the fee charged by the trust on cancellation or termination, which is the lesser of two (2) percent of the amount refunded or twenty-five (25) dollars, or for multiple substitution of beneficiaries, twenty-five (25) dollars;

(6) "Board expense" shall mean the actual and necessary expenses incurred by the board in connection with trust business;

(7) The term "control account" shall mean the account established for each beneficiary, with one (1) or more subsidiary accounts;
(8) The term "designated date" shall mean the date on which each beneficiary is eligible to be designated in a participation agreement;
(9) "Effective date" shall mean the date which a participant may enter into a participation agreement with the trust, which is on or after July 1, 1989;
(10) The term "general unrestricted endowment income" shall mean the investment income derived from the endowment fund which benefits are paid for a beneficiary attending an institution in the Commonwealth;
(11) The words "hardship" or "emergency" shall denote those circumstances and conditions of a sudden nature, including catastrophic illness, which deprive the participant or his dependent from the basic necessities or comforts of life or proper health care;
(12) The term "investment income" shall mean the earnings from the investments in the program fund and the endowment fund;
(13) The term "investment loss" shall mean a loss from the investments in the program fund and the endowment fund;
(14) The term "Kentucky ties" shall mean participants or beneficiaries who have contact or ties with the Commonwealth, such as current or former residence or employment in the Commonwealth, or family members with current or former residence in the Commonwealth;
(15) The term "minimum rate of return" shall mean the minimum earnings of four (4) percent guaranteed by the trust on payments made by the participant;
(16) "Notice to delay benefits under participation agreement" shall mean the form prescribed by the trust which a participant completes to delay benefits under a participation agreement after the beneficiary has attained the age of eighteen (18);
(17) "Notice to extend payments under participation agreement" shall mean the form prescribed by the trust which a participant completes to extend payments under a participation agreement beyond the beneficiary's age of eighteen (18);
(18) "Notice to increase/decrease payments under participation agreement" shall mean the form prescribed by the trust which a participant completes to increase or decrease payments under a participation agreement;
(19) "Notice to preauthorize debit" shall mean the form prescribed by the trust which a participant completes to notify the participant's financial institution to debit or charge the participant's checking or savings account for payments due under the participation agreement;
(20) "Notice to substitute beneficiary" shall mean the form prescribed by the trust which a participant completes to substitute a beneficiary;
(21) "Notice to terminate the participation agreement" shall mean the form prescribed by the trust which a participant completes to terminate a participation agreement under the trust;
(22) "Notice to use trust benefits" shall mean the form prescribed by the trust which a participant completes to notify the trust of the date benefits are to begin;
(23) "Notice to withhold payments from payroll" shall mean the form prescribed by the trust which a participant completes to direct the participant's employer to withhold payments from the participant's payroll check and forward that amount to the trust;
(24) The word "payments" shall denote the money paid by the participant to the trust under the participation agreement;
(25) The term "payment book" shall mean the book which contains individual coupons, designating the amount and due date of each payment;
(26) The terms "property settlement agreement" or "decree of dissolution by the court" shall mean the agreement or judgment approved or entered by a court of competent jurisdiction which sets forth the participant's right, if any, to the participant's interest in the participation agreement;
(27) The term "restricted endowment income" shall mean the investment income from the endowment fund which may be distributed as benefits only to a particular group or class of beneficiaries, such as the beneficiaries of participants who are employees or members of a particular organization;
(28) The term "trust year" shall mean the fiscal year beginning July 1 and ending the following June 30 of each year for purposes of the calculation of benefits.

L. ROGERS WELLS, JR., Chairman
APPROVED BY AGENCY: November 14, 1989
FILED WITH LRC: November 28, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
200 KAR 16:030E

This emergency administrative regulation establishes the eligibility criteria for a beneficiary and a participant and the proof of age required for a beneficiary to participate in the participation agreement. It has been determined that an emergency exists that requires immediate action to permit a participant to immediately establish a savings plan for a beneficiary's higher education costs, or to permit a participant to enroll a beneficiary in a savings plan before a beneficiary obtains age 15, or to allow a beneficiary attending a Kentucky institution to receive the maximum benefit from the earnings on the endowment fund. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 28, 1989.

WALLACE G. WILKINSON, Governor
L. ROGERS WELLS, JR., Secretary

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:030E. Eligibility of beneficiary and participant.

RELATES TO: KRS 164A.330(4)
STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10), 164A.380
EFFECTIVE: November 28, 1989
NECESSITY AND FUNCTION: KRS 164A.380 provides that this Act shall be construed liberally in order to effectuate its legislative intent and

the powers granted shall be broadly interpreted to effectuate such intent and purposes. KRS 164A.330(4) provides that a beneficiary in a participation agreement may be designated from date of birth to age fifteen (15). This regulation defines the term "Kentucky ties", establishes the eligibility criteria for a beneficiary and a participant and the proof of age required for a beneficiary to participate in the participation agreement.

Section 1. Definition. (1) "Beneficiary" (as defined in KRS 164A.305).
(2) "Designation date" shall mean the date on which each beneficiary is eligible to be designated in a participation agreement.
(3) "Kentucky ties" shall mean participants or beneficiaries who have contacts or ties with the Commonwealth, such as current or former residence, or employment in the Commonwealth, or family members with current or former residence in the Commonwealth.
(4) "Participant" (as defined in KRS 164A.305).
(5) "Participation agreement" (as defined in KRS 164A.305).
(6) "Trust" (as defined in KRS 164A.305).

Section 2. Beneficiary Eligibility. A beneficiary may be a resident of any state who, on the designation date, is less than fifteen (15) years old. Either a participant or a beneficiary shall have "Kentucky ties".

Section 3. Proof of Age. A participant shall, on signing a participation agreement, provide the trust with proof of the beneficiary's age, in the form of a birth certificate or such other record as the trust may require.

Section 4. Participant Eligibility. A participant may be a resident of any state who, on signing the participation agreement, has attained the age of eighteen (18). Either a participant or a beneficiary shall have "Kentucky ties".

L. ROGERS WELLS, JR., Chairman
APPROVED BY AGENCY: November 14, 1989
FILED WITH LRC: November 28, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
200 KAR 16:040E

This emergency administrative regulation is necessary not only to clarify, interpret and to establish the standards for residency of a beneficiary for tuition purposes, who would not otherwise be classified as a resident except for participating in the trust, but to establish proof of residence of a beneficiary. It has been determined that an emergency exists that requires immediate action to permit a participant to immediately establish a savings plan for a beneficiary's higher education costs, or to permit a participant to enroll a beneficiary in a savings plan before a beneficiary obtains age 15, or to allow a beneficiary attending a Kentucky institution to receive the maximum benefit from the earnings on the endowment fund. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 28, 1989.

WALLACE G. WILKINSON, Governor
L. ROGERS WELLS, JR., Secretary

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:040E. Residency classification for tuition purposes.

RELATES TO: KRS 164A.305(15), (16), 164A.330(9)
STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10)
EFFECTIVE: November 28, 1989
NECESSITY AND FUNCTION: KRS 164A.305(15) provides that "vested participation agreement" means a participation agreement which has been in full force and effect during the vestment period without default. KRS 164A.305(16) provides that "vestment period" means eight (8) continuous years of residency in the Commonwealth while participating in the trust. KRS 164A.330(9) requires that each participation agreement shall provide that for a vested participation agreement, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky prior to enrollment in any other educational institution. This regulation is necessary not only to clarify, interpret and to establish the standards for residency of a beneficiary for tuition purposes, who would not otherwise be classified as a resident except for participating in the trust, but to establish proof of residency of a beneficiary.

Section 1. Definitions. (1) "Beneficiary" (as defined in KRS 164A.305).
(2) "Institution of higher education" or "institution" (as defined in KRS 164A.305).
(3) "Trust" (as defined in KRS 164A.305).
(4) "Vested participation agreement" (as defined in KRS 164A.305).
(5) "Vestment period" (as defined in KRS 164A.305).

Section 2. Residency. To be classified as a resident for tuition purposes, a beneficiary who has a vested participation agreement shall be considered a resident of the Commonwealth if the beneficiary has been a resident during the vestment period and enrolls in an institution of higher education in Kentucky prior to enrollment in any institution outside the Commonwealth.

Section 3. Proof of Residency. The beneficiary shall, on enrolling in an institution, provide the trust with proof of residency, in the form of school transcripts from a school or schools in the Commonwealth or such other records as the trust may require.

L. ROGERS WELLS, JR., Chairman
APPROVED BY AGENCY: November 14, 1989
FILED WITH LRC: November 28, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
200 KAR 16:050E

This emergency administrative regulation establishes the notice provision for

substitution of a beneficiary and administrative fee in the event of multiple substitutions. This regulation also clarifies and establishes, respectively, the obligation of a participant and the trust in the event that the substituted beneficiary is older or younger than the original. It has been determined that an emergency exists that requires immediate action to permit a participant to immediately establish a savings plan for a beneficiary's higher education costs, or to permit a participant to enroll a beneficiary in a savings plan before a beneficiary obtains age 15, or to allow a beneficiary attending a Kentucky institution to receive the maximum benefit from the earnings on the endowment fund. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 28, 1989.

WALLACE G. WILKINSON, Governor
L. ROGERS WELLS, JR., Secretary

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:050E. Substitution of a beneficiary.

RELATES TO: KRS 164A.325(6), 164A.330(7), (8), 164A.340
STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10), 164A.380
EFFECTIVE: November 28, 1989
NECESSITY AND FUNCTION: KRS 164A.330(7), (8) and 164A.340 establishes the statutory framework for the substitution of a beneficiary, and KRS 164A.325(6) provides, in pertinent part, that the trust may promulgate, impose and collect administrative fees and charges in connection with the transactions of the trust. KRS 164A.340 provides, in pertinent part, for the adjustment of payments or benefits in the event that a substituted beneficiary is eligible for enrollment at an institution on a date earlier than the original beneficiary. This regulation establishes the notice provision for substitution of a beneficiary and administrative fee in the event of multiple substitutions. In addition, this regulation is necessary to clarify and establish, respectively, the obligations of the participant and the trust in the event that the substituted beneficiary is older or younger than the original.

Section 1. Definitions. (1) "Administrative fee" shall mean the fee charged by the trust on cancellation or termination, which is the lesser of two (2) percent of the amount refunded or twenty-five (25) dollars, or for multiple substitution of beneficiaries, twenty-five (25) dollars.
(2) "Beneficiary" (as defined in KRS 164A.305).
(3) "Benefits" (as defined in KRS 164A.305).
(4) "Endowment fund" (as defined in KRS 164A.305).
(5) "Institution" (as defined in KRS 164A.305).
(6) "Notice to substitute beneficiary" shall mean the form prescribed by the trust which a participant completes to substitute a beneficiary.
(7) "Participant" (as defined in KRS 164A.305).
(8) "Participation agreement" (as defined in KRS 164A.305).
(9) "Program fund" (as defined in KRS 164A.305).
(10) "Trust" (as defined in KRS 164A.305).

Section 2. Substitution. A participant may substitute a beneficiary at any time. If a participant desires to substitute the beneficiary, then a participant shall give written notice to the trust, by submitting a "notice to substitute beneficiary".
(1) Younger beneficiary. If a substituted beneficiary is eligible for enrollment at an institution on a date later than the original beneficiary, a participant shall give written notice to the trust, not less than 180 days before the date of the original beneficiary's admission to the institution.
(2) Older beneficiary. If a substituted beneficiary is eligible for enrollment at an institution on a date earlier than the original beneficiary, a participant shall give written notice to the trust, not less than 180 days before the date of original beneficiary's eligibility for enrollment at an institution. Either a participant shall pay to the trust a reasonable fee or cost to place a substituted beneficiary on a basis of actuarial parity with the original beneficiary, or the benefits shall be paid at a reduced rate equal to the rate of return generated by the program fund and endowment fund during such lesser time period.
(3) Multiple. If a participant substitutes a beneficiary under a participation agreement more than twice, then the trust shall require the participant to pay the administrative fee.

L. ROGERS WELLS, JR., Chairman
APPROVED BY AGENCY: November 14, 1989
FILED WITH LRC: November 28, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
200 KAR 16:060E

This emergency administrative regulation is necessary to clarify the ownership and refund rights of the unused investment income of the program fund after partial utilization of benefits and to establish the administrative refund fee charged by the trust. It has been determined that an emergency exists that requires immediate action to permit a participant to immediately establish a savings plan for a beneficiary's higher education costs, or to permit a participant to enroll a beneficiary in a savings plan before a beneficiary obtains age 15, or to allow a beneficiary attending a Kentucky institution to receive the maximum benefit from the earnings on the endowment fund. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 28, 1989.

WALLACE G. WILKINSON, Governor
L. ROGERS WELLS, JR., Secretary

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:060E. Ownership and refund of investment income after partial utilization of

benefits.

RELATES TO: KRS 164A.350(1), (2)
STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10)
EFFECTIVE: November 28, 1989
NECESSITY AND FUNCTION: KRS 164A.350(1) specifies the owner of all payments and investment income of the program fund before and after the date of payments for higher education costs. KRS 164A.325(2) provides, in pertinent part, that in the event the participation agreement is terminated after partial utilization of benefits for the beneficiary, then an administrative refund fee will be charged on a pro rata basis. This regulation is necessary to clarify the ownership and refund rights of the unused investment income of the program fund after partial utilization of benefits and the administrative refund fee charged by the trust.

Section 1. Definitions. (1) "Administrative fee" shall mean the fee charged by the trust on cancellation or termination, which is the lesser of two (2) percent of the amount refunded or twenty-five (25) dollars, or for multiple substitution of beneficiaries, twenty-five (25) dollars.
(2) "Beneficiary" (as defined in KRS 164A.305).
(3) "Benefits" (as defined in KRS 164A.305).
(4) "Investment income" means the earnings from the investments in the program fund.
(5) "Participant" (as defined in KRS 164A.305).
(6) "Participation agreement" (as defined in KRS 164A.305).
(7) "Payments" shall mean the money paid by the participant to the trust under the participation agreement.
(8) "Trust" (as defined in KRS 164A.305).

Section 2. After Partial Utilization. (1) Ownership. If a participation agreement is terminated after partial utilization of benefits, the participant retains ownership of all unused payments, and the trust shall hold in trust for the beneficiary, all unused investment income accrued on all the payments.
(2) Refund. If a participation agreement is cancelled or terminated after partial payment of benefits, the participant is entitled to the balance of all payments, and the beneficiary is entitled to the balance of the investment income, and each shall pay an administrative fee on a pro rata basis.

L. ROGERS WELLS, JR., Chairman
APPROVED BY AGENCY: November 14, 1989
FILED WITH LRC: November 28, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
200 KAR 16:070E

This emergency administrative regulation establishes a refund payment provision and the rate of return after notice of termination. It has been determined that an emergency exists that requires immediate action to permit a participant to immediately establish a savings plan for a beneficiary's higher education costs, or to permit a participant to enroll a beneficiary in a savings plan before a beneficiary obtains age 15, or to allow a beneficiary attending a Kentucky institution to receive the maximum benefit from the earnings on the endowment fund. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 28, 1989.

WALLACE G. WILKINSON, Governor
L. ROGERS WELLS, JR., Secretary

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:070E. Payment of refund and rate of return after notice of termination.

RELATES TO: KRS 164A.345(1)
STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10)
EFFECTIVE: November 28, 1989
NECESSITY AND FUNCTION: KRS 164A.345(1) provides, in pertinent part, that any participant may cancel a participation agreement at will and specifies the amount of refund the participant is entitled to at various stages, including an administrative fee to be charged by the trust. This regulation is necessary to establish a refund payment provision and the rate of return after notice of termination.

Section 1. Definitions. (1) "Account" shall denote the account in the program fund established and maintained under the trust for a beneficiary.
(2) "Hardship" or "emergency" shall mean those circumstances and conditions of a sudden nature, including catastrophic illness, which deprive the participant or his dependent from the basic necessities or comforts of life or proper health care.
(3) "Minimum rate of return" shall mean the minimum earnings of four (4) percent guaranteed by the trust on payments made by the participant.
(4) "Participant" (as defined in KRS 164A.305).
(5) "Participation agreement" (as defined in KRS 164A.305).
(6) "Program fund" (as defined in KRS 164A.305).
(7) "Trust" (as defined in KRS 164A.305).

Section 2. Payment of Refund. (1) Notice and method. On a participant terminating or cancelling the participation agreement, the trust shall refund the money from the account in two (2) equal annual payments, commencing sixty (60) days from the date of termination or cancellation.
(2) Hardship or emergency. If a participant terminates or cancels the participation agreement under conditions of hardship or emergency, then the trust shall immediately refund all money from the account, within sixty (60) days after notice.

Section 3. Rate of Return After Notification. After notice of termination, all money in the program fund shall draw interest at a minimum rate of return until paid.

L. ROGERS WELLS, JR., Chairman
APPROVED BY AGENCY: November 14, 1989
FILED WITH LRC: November 28, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
200 KAR 16:080E

This emergency administrative regulation is necessary to establish the maximum benefits payable in any academic period, the duration of the payments, the payment of benefits for a beneficiary residing off-campus and the notice provisions in the event of a refund of the payments for nonuse or unused benefits from the program fund. It has been determined that an emergency exists that requires immediate action to permit a participant to immediately establish a savings plan for a beneficiary's higher education costs, or to permit a participant to enroll a beneficiary in a savings plan before a beneficiary obtains age 15, or to allow a beneficiary attending a Kentucky institution to receive the maximum benefit from the earnings on the endowment fund. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 28, 1989.

WALLACE G. WILKINSON, Governor
L. ROGERS WELLS, JR., Secretary

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:080E. Benefits payable from the program fund.

RELATES TO: KRS 164A.310(8), 164A.330(5), 164A.335(3)
STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10)
EFFECTIVE: November 28, 1989
NECESSITY AND FUNCTION: KRS 164A.310(8), 164.330(5) and 164A.335(3) establishes the statutory framework for payment of benefits to an institution from the program fund. This regulation is necessary to establish the maximum benefits payable in any academic period, the duration of the payments, the payment of benefits for a beneficiary residing off campus and the notice provisions in the event of a refund of the payments for nonuse or unused benefits from the program fund.

Section 1. Definitions. (1) "Academic period" shall mean one-eighth (1/8) of eight (8) semesters or one-twelfth (1/12) of twelve (12) quarters at a four (4) year institution; one-fourth (1/4) of four (4) semesters or one-sixth (1/6) of six (6) quarters at a two (2) year institution; or an equivalent period for a vocational technical institution.

(2) "Account" shall denote the account in the program fund established and maintained under the trust for a beneficiary.

(3) "Administrative fee" shall mean the fee charged by the trust on cancellation or termination, which is the lesser of two (2) percent of the amount refunded or twenty-five (25) dollars.

(4) "Beneficiary" (as defined in KRS 164A.305).

(5) "Benefits" (as defined in KRS 164A.305).

(6) "Endowment fund" (as defined in KRS 164A.305).

(7) "Higher education costs" (as defined in KRS 164A.305).

(8) "Institution" (as defined in KRS 164A.305).

(9) "Investment income" shall mean the earnings from the investments in the program fund.

(10) "Notice to delay benefits under participation agreement" shall mean the form prescribed by the trust which a participant completes to extend payments under a participation agreement beyond the beneficiary's age of eighteen (18).

(11) "Participant" (as defined in KRS 164A.305).

(12) "Payments" shall denote the money paid by the participant to the trust under the participation agreement.

(13) "Program fund" (as defined in KRS 164A.305).

(14) "Trust" (as defined in KRS 164A.305).

Section 2. Maximum Benefits. Each payment of benefits made to the institution may not exceed the beneficiary's entitlement in the program fund in any academic period, as such entitlement bears to the total semesters or quarters of the institution attended by the beneficiary.

Section 3. Duration. The payment of benefits shall begin on a beneficiary's enrollment in an institution and continue throughout each academic period or until such benefits have been exhausted, whichever first occurs.

Section 4. Beneficiary Residing Off Campus. If a beneficiary resides off campus, then the trust shall pay to the beneficiary, in addition to the amounts paid to the institution, an amount equal to the cost of lodging and meal ticket for an academic semester as established by said institution for on-campus students. However, the amounts paid to the institution and the beneficiary shall not exceed the amount payable in any academic period from the program fund and the endowment fund or exceed the higher education costs for that institution.

Section 5. Nonenrollment. If a beneficiary does not enroll in an institution after he attains the age of eighteen (18), or a participant does not provide the trust with a "notice to delay benefits under participation agreement", then the trust shall refund the payments and investment income on the payments in accordance with the Act.

Section 6. Unused Benefits. (1) During academic period. If a beneficiary's higher education costs are less than the benefits due for any academic period, then that portion of the unused benefits shall accumulate to the beneficiary's account. The unused benefits plus the beneficiary's entitlement in the program fund in any academic period may be paid to the institution for the beneficiary in the next succeeding academic period.

(2) After graduation. If the beneficiary graduates from an institution, and a balance in the beneficiary's account exists, then the trust shall pay the balance of the payments to the participant, and the balance of the investment income to the beneficiary. The trust shall make the payment from the program fund within sixty (60) days from the date of the beneficiary's graduation, and the administrative fee shall be deducted from the payment in accordance with the provisions of the Act.

L. ROGERS WELLS, JR., Chairman
APPROVED BY AGENCY: November 14, 1989
FILED WITH LRC: November 28, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
200 KAR 16:090E

This emergency administrative regulation is necessary to clarify a beneficiary's entitlement to the general unrestricted endowment income and the restricted endowment income, if any, as established by the Act. This regulation also establishes a beneficiary's entitlement to the unused general unrestricted endowment income in any trust year where there is a partial distribution or no distribution of this income. It has been determined that an emergency exists that requires immediate action to permit a participant to immediately establish a savings plan for a beneficiary's higher education costs, or to permit a participant to enroll a beneficiary in a savings plan before a beneficiary obtains age 15, or to allow a beneficiary attending a Kentucky institution to receive the maximum benefit from the earnings on the endowment fund. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 28, 1989.

WALLACE G. WILKINSON, Governor
L. ROGERS WELLS, JR., Secretary

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:090E. Benefits payable from the endowment fund.

RELATES TO: KRS 164A.335(2), (3)
STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10), 164A.380
EFFECTIVE: November 28, 1989
NECESSITY AND FUNCTION: KRS 164A.335(2) and (3) establish the statutory framework for the endowment fund and separates the fund into two (2) separate income funds, identified as the general unrestricted endowment fund and the restricted endowment income fund. KRS 164A.335(3) provides, in pertinent part, a beneficiary's pro rata interest in the investment income derived by the endowment fund in any year in which benefits are paid under the participation agreement to the institution. This regulation is necessary to not only clarify a beneficiary's entitlement to the general unrestricted endowment income and the restricted endowment income, if any, as established by the Act, but to establish the beneficiary's entitlement to the unused general unrestricted endowment income in any trust year where there is a partial distribution or no distribution of this income.

Section 1. Definitions. (1) "Academic period" shall mean one-eighth (1/8) of eight (8) semesters or one-twelfth (1/12) of twelve (12) quarters at a four (4) year institution; one-fourth (1/4) of four (4) semesters or one-sixth (1/6) of six (6) quarters at a two (2) year institution; or an equivalent period for a vocational technical institution.

(2) "Beneficiary" (as defined in KRS 164A.305).
(3) "Benefits" (as defined in KRS 164A.305).
(4) "Endowment fund" (as defined in KRS 164A.305).
(5) "General unrestricted endowment income" shall mean the investment income derived from the endowment fund which benefits are paid for a beneficiary attending an institution in the Commonwealth.
(6) "Higher educational costs" (as defined in KRS 164A.305).
(7) "Institution" (as defined in KRS 164A.305).
(8) "Investment income" shall mean the earnings from the investments in the endowment fund.
(9) "Participant" (as defined in KRS 164A.305).
(10) "Payments" shall denote the money paid by the participant to the trust under the participation agreement.
(11) "Program fund" (as defined in KRS 164A.305).
(12) "Restricted endowment income" shall mean the investment income from the endowment fund which may be distributed as benefits only to a particular group or class of beneficiaries, such as the beneficiaries of participants who are employees or members of a particular organization.
(13) "Trust" (as defined in KRS 164A.305).
(14) "Trust year" means the fiscal year beginning July 1 and ending the following June 30 of each year for purposes of the calculation of benefits.

Section 2. General Unrestricted Endowment Income. (1) Each beneficiary attending a Kentucky institution is entitled to receive a pro rata interest in the general unrestricted endowment income in any year in which benefits are paid to an institution. The amounts paid from the general unrestricted endowment income to an institution shall be in the ratio of the payments made by each participant and investment income earned to date thereon bears to the principal amount of all money, funds and securities then held in the program fund.
(2) When the trust makes a payment from the program fund, the trust shall also simultaneously pay from the general unrestricted endowment income, such proportionate amount to the Kentucky institution, and such payment shall be used for payment of higher education costs of the beneficiary. Each payment made to the institution shall not exceed the beneficiary's entitlement in the general unrestricted endowment income in any academic period, as such academic period bears to the total semesters or quarters to that institution.

Section 3. Restricted Endowment Income. If the beneficiary qualifies for benefits from the restricted endowment income of the endowment fund, then the beneficiary shall receive benefits in accordance with the terms and conditions agreed to by the trust and the donor. The benefits from the restricted endowment income are calculated without regards to the general unrestricted endowment income, and are in addition to the beneficiary's pro rata share of benefits from the general unrestricted endowment income.

Section 4. Kentucky Institution. A beneficiary who does not attend a Kentucky institution, shall have no right to the endowment fund.

Section 5. Unused General Unrestricted Endowment Income in Trust Year. If there is a partial distribution of the general unrestricted endowment income in any trust year, then the unused portion shall accumulate and be a part of the general unrestricted endowment income for the succeeding trust year. If there is no distribution of benefits from the general unrestricted endowment income in any trust year, then the unused income for that year shall be added to, and made a part of the principal of the general unrestricted endowment fund.

L. ROGERS WELLS, JR., Chairman
APPROVED BY AGENCY: November 14, 1989
FILED WITH LRC: November 28, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
201 KAR 20:310E

The nurse faculty requirements of 201 KAR 20:310 Sections 1(3)(b), 2(3)(a) and (b) are presently scheduled to take effect on January 1, 1990. The Board of Nursing has concluded that several programs of nursing education will not be able to comply with the new faculty standards despite good faith efforts to do so. The reason for the prospective noncompliance appears to be a combination of geographic location, funding difficulties, and intense demand for nurses educated at the levels specified in the regulation. In view of these circumstances, and in consideration of the importance to Kentucky of maintaining maximum access to nursing education at this critical juncture, the public would best be served by delaying the effective date of the new faculty standards for a period of two years. During that time the Board of Nursing will carefully evaluate faculty requirements in an effort to maximize the numbers of new graduate nurses while maintaining adequate standards of patient safety. It should be noted that this emergency amendment will not affect the accreditation of any Kentucky program of nursing education. An emergency amendment is necessary because there is not sufficient time to complete the promulgation process prior to January 1, 1990. It is intended that this amendment remain in effect, and to that end an identical ordinary amendment has been filed contemporaneously.

WALLACE G. WILKINSON, Governor
VIRGINIA W. JENKINS, President

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing

201 KAR 20:310E. Faculty for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.011(5), 314.111(1)
STATUTORY AUTHORITY: KRS Chapter 314
EFFECTIVE: November 20, 1989
NECESSITY AND FUNCTION: It is necessary to establish standards for faculty of programs of nursing which prepare graduates for licensure as registered nurses or practical nurses.

Section 1. Faculty for Prelicensure Registered Nurse Programs. (1) Number and composition. The faculty shall include but not be limited to a nurse administrator and faculty in the major areas of clinical nursing practice.

(a) The faculty shall be adequate in number and composition to plan and to implement the curriculum of the program in relation to its stated purpose, philosophy, objectives, and number and size of student classes admitted annually, and any additional extension, experimental or continuing education programs.

(b) The faculty shall be adequate in number to provide for the supervision of students in the clinical practice experience as stated in Section 1(3) of 201 KAR 20:260.

(2) Nurse administrator qualifications:

(a) A minimum of a masters or higher degree in nursing if appointed after September 1, 1980.

(b) A minimum of five (5) years of nursing experience within the immediate past ten (10) years and experience in administration.

(c) Current license to practice as a registered nurse in the Commonwealth of Kentucky.

(3) Nurse faculty qualifications:

(a) After September 1, 1985, at least three-fourths (3/4) of the nurse faculty members including full-time equivalents in all educational programs whose faculty prepares students for licensure as registered nurses shall have a minimum of a masters degree in nursing. A program of nursing may include as part of the three-fourths (3/4) of nursing faculty with masters degrees, those nurse faculty members employed prior to September 1, 1980 who have a baccalaureate degree in nursing and a masters degree in a related field.

(b) After January 1, 1992 [1990], new nurse faculty appointees shall hold a masters or higher degree in nursing.

(c) Current license to practice as a registered nurse in the Commonwealth of Kentucky.

(d) Experience in the clinical or functional area of responsibility or both with a minimum of two (2) years nursing experience within the immediate past five (5) years.

(e) Experience in the application of principles in teaching and learning.

Section 2. Faculty for Prelicensure Practical Nurse Programs. (1) Number and composition. The faculty shall include but not be limited to a nurse administrator and faculty in the major areas of clinical nursing practice.

(a) The faculty shall be adequate in number and composition to plan and to implement the curriculum in relation to its stated purpose, philosophy, objectives, and number and size of student classes admitted annually.

(b) All nurse faculty members shall be appointed by and be responsible to the governing institution of the programs of nursing.

(c) There shall be a minimum of two (2) full-time nurse faculty members employed. The faculty shall be adequate in number to provide for the supervision of students in the clinical practice experience as stated in Section 1(3) of 201 KAR 20:260.

(2) Nurse administrator qualifications:

(a) A bachelor of science degree in nursing if appointed after July 1, 1980.

(b) A minimum of five (5) years of nursing experience within the past ten (10) years with experience in administration.

(c) Current licensure to practice as a registered nurse in the Commonwealth of Kentucky.

(3) Nurse faculty qualifications:

(a) New faculty employed after September 1, 1985 shall have earned a minimum of a baccalaureate degree by January 1, 1992 [1990].

(b) After January 1, 1992 [1990], new faculty appointees shall have a minimum of a baccalaureate degree in nursing.
(c) Current licensure to practice as a registered nurse in the Commonwealth of Kentucky.
(d) Qualifications in the clinical or functional are of responsibility, or both.
(e) A minimum of three (3) years of nursing experience as a licensed nurse.
(f) A minimum of one (1) year of registered nursing practice experience during the three (3) years that immediately precede the date of appointment.
(g) Experience in the application of principles in teaching and learning.

Section 3. Evaluation of Registered Nurse and Practical Nurse Faculty. (1) Evaluation of faculty records. The nurse administrator shall submit to the board the qualifications of faculty members upon appointment.
(a) Official college transcripts or copies verified by the nurse administrator or designee shall be available to the board upon request.
(b) A complete and official record of qualifications and workload for each faculty member shall be on file and available to the board upon request.
(2) Reevaluation of faculty records. The board shall review annually the qualifications of the faculty employed in the program of nursing. If standards are not met, the governing institution shall be notified that a new student class may not be enrolled until standards are met. Further, the program of nursing may be subject to conditional approval status in accordance with Section 2(2) of 201 KAR 20:280.

VIRGINIA W. JENKINS, President
APPROVED BY AGENCY: November 6, 1987
FILED WITH LRC: November 20, 1989 at 9 a.m.

STATEMENT OF EMERGENCY
501 KAR 6:050E

In order to continue to operate the Luther Luckett Correctional Complex in accordance with KRS Chapter 196, the Corrections Cabinet needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected institutional policies must be revised immediately to allow the Luther Luckett Correctional Complex to expand visiting times, set up different schedules and change the staffing. This is due to the fact that the inmate population has more than doubled the original capacity of the institution. This has in turn placed a greater burden on the limited facilities to provide minimal visiting opportunities for inmates and their families. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on November 15, 1989 in accordance with KRS Chapter 13A.

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

CORRECTIONS CABINET

501 KAR 6:050E. Luther Luckett Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: November 17, 1989
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on 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 17, 1989 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 6:140E

In order to continue to operate the Bell County Forestry Camp in accordance with KRS Chapter 196, the Corrections Cabinet needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected institutional policies must be implemented to allow the Bell County Forestry Camp to submit a series of new and revised policies to prepare the institution for an upcoming national accreditation audit. These policies are needed to bring the Bell County Forestry Camp into compliance with standards set by the American Correctional Association. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on November 15, 1989 in accordance with KRS Chapter 13A.

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

CORRECTIONS CABINET

501 KAR 6:140E. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: November 17, 1989
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 17, 1989 at 3 p.m.

STATEMENT OF EMERGENCY
702 KAR 7:065E

KRS 156.070 requires that the rules and bylaws of the Kentucky High School Athletic Association (KHSAA) be approved by the State Board for Elementary and Secondary Education. KHSAA's Delegate Assembly meets late each July to consider and adopt rules changes for the coming school year. This emergency regulation is necessary in order to get KHSAA's rules and bylaws appropriately updated for the 1989-90 school year. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 15, 1989.

WALLACE G. WILKINSON, Governor
ROBERT E. RUBERG, Vice Chairman

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance

702 KAR 7:065E. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070
STATUTORY AUTHORITY: KRS 156.070
EFFECTIVE: November 17, 1989
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 17, 1989 at 10 a.m.

STATEMENT OF EMERGENCY
904 KAR 3:020E

This emergency administrative regulation amends the regulation to expand the countable income provisions to include ongoing Agent Orange payments in income considerations. The revision shall become effective December 1, 1989. The emergency administrative regulation amends the regulation to provide for income and resource exclusions of Indian Per Capita payments of $2,000 or less. Further, purchases of $2,000 or less which are made solely with this income, after December 31, 1981, but prior to January 12, 1983, may be an excluded resources as well. These revisions to the regulation are effective September 1, 1989, as a result of a recent food and nutrition service transmittal. The emergency administrative regulation amends the regulation to address income which is withheld by an employer to pay certain expenses as a vendor payment to a third party. This income may be an excluded resource if the remainder of such income, at the end of the year, is not accessible to the household. This revision is effective September 1, 1989, as a result of a recent food and nutrition service transmittal. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

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

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

904 KAR 3:020E. Eligibility requirements.

RELATES TO: KRS 194.050
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: December 1, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Eligibility Requirements. In accordance with regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, national uniform standards of eligibility for the Food Stamp Program, composed of both financial and nonfinancial criteria, shall be utilized. Financial criteria shall consist of income and resource limitations. Nonfinancial criteria shall consist of certain technical factors. Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. The income eligibility standards are derived from the Office of Management and Budget's (OMB) nonfarm income poverty guidelines.

Section 2. Countable Income. All income from any source shall be counted, except income

specifically excluded in Section 3 of this regulation, including but not limited to:

(1) Wages earned by a household member, including all wages received by a striker the day prior to the strike or wages received during the month of application, whichever is higher, in accordance with 7 CFR 273.1(g).

(2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business.

(3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursements.

(4) Payments under Title I (Volunteers in Service to America, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 shall be considered earned income unless specifically excluded in 7 CFR 273.9(c)(10)(iii).

(5) The earned or unearned income of excluded household members as set forth in 904 KAR 3:035, Section 5(3).

(6) Assistance payments from federal or federally aided public assistance such as supplemental security income (SSI) or aid to families with dependent children (AFDC); general assistance (GA) programs, or other assistance programs based on need.

(7) Annuities; pensions; retirement; veteran's or disability benefits; ongoing Agent Orange payments; worker's or unemployment compensation; strike pay; old-age, survivors, or social security benefits; foster care payments for children or adults; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week.

(8) Wages earned by a household member which are garnisheed or diverted by an employer and paid to a third party for a household expense.

(9) Support or alimony payments made directly to the household from nonhousehold members. This includes any portion of such payments returned to the household by the cabinet.

(10) Such portion of scholarships, educational grants, fellowships, deferred payment loans for education, veterans educational benefits and the like which are not excludable under Section 3(6) of this regulation.

(11) Payments from government sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(12) Monies withdrawn or dividends which are or could be received from a trust fund considered to be excludable under 7 CFR 273.8(e)(8) by a household, unless otherwise exempt under the provisions set forth in 7 CFR 273.9(c).

(13) That amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien in accordance with 7 CFR 273.11(h).

(14) Assistance monies from another program, as specified in 7 CFR 273.11(j), which are withheld for purposes of recouping an overpayment which resulted from the household's intentional failure to comply with that program's requirements. These withheld monies shall be considered as income in accordance with 7 CFR 273.11(j).

(15) Earnings to individuals who are participating in on-the-job training programs under the Job Training Partnership Act. This provision does not apply to household members under nineteen (19) years of age who are under the parental control of another adult member.

(16) Portions of Indian Per Capita payments made pursuant to P.L. 98-64 in excess of $2,000 per payment per individual, effective September 1, 1989.

Section 3. Income Exclusions. The following payments shall not be considered as income:

(1) Money withheld from an assistance payment, earned income or other income source, or monies received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, provided the overpayment was not excludable in accordance with 7 CFR 273.9(c). However, monies withheld, as specified in Section 2, subsection (14) of this regulation shall not be excluded.

(2) Child support payments received by AFDC recipients which must be transferred to the division administering Title IV-D of the Social Security Act, as amended, to maintain AFDC eligibility. However, any portion of such monies returned to the household by the cabinet shall not be excluded.

(3) Any gain or benefit which is not in the form of money payable directly to the household.

(4) Money payments that are not payable directly to a household, but are paid to a third party for a household expense are excludable as a vendor payment as defined in 7 CFR 273.9(c).

(5) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty (30) dollars in a quarter.

(6) As defined in 7 CFR 273.9(c), educational loans on which payment is deferred, grants, scholarships, fellowships, veteran educational benefits, and the like to the extent that they are made available for tuition and mandatory fees at an institution of post secondary education, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped. Origination fees and insurance premiums on student loans are excludable charges. For federal education assistance programs funded under Title IV of the Higher Education Act or effective December 1, 1988, Student Assistance Programs under the Bureau of Indian Affairs, additional income exclusions include costs of books, travel, routine supplies, and cost for rental or purchase of equipment used for educational purposes. Portions of nonfederal (state, local, or private) deferred payment educational loans are excluded based on provisions contained in 7 CFR 273.9(c)(4).

(7) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

(8) Reimbursements for past or future expenses to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household as defined in 7 CFR 273.9(c).

(9) Money received and used for the care and maintenance of a third party beneficiary who is not a household member.

(10) The earned income of children who are

members of the household, who are students at least half time and who have not attained their 18th birthday.

(11) Money received in the form of a nonrecurring lump-sum payment.

(12) The cost of producing self-employment income. If the cost of producing farm self-employment income exceeds the income derived from self-employment farming as defined in 7 CFR 273.11(a), such losses shall be offset against any other countable income in the household.

(13) Any income specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program.

(14) Any energy assistance payments made under federal laws or certified as excludable energy payments by FNS.

(15) Any cash donations based on need received on or after February 1, 1988 from nonprofit charitable organizations, not to exceed $300 in a federal fiscal quarter in accordance with 7 CFR 273.9(iv)(2).

(16) Foster care payments for foster children. This provision applies only when the household requests that the foster children be excluded from the household in determining eligibility (effective February 1, 1989).

(17) Up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II (effective February 1, 1989).

(18) Monies received under Section 3507 of the Internal Revenue Code (advanced payment of earned income credit).

(19) Indian Per Capita payments made pursuant to P.L. 98-64 as distribution from judgment awards and trust funds of $2,000 or less per individual per payment, effective September 1, 1989.

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program is limited to those households whose incomes fall at or below the applicable standards as established by FNS and which are set forth below:

(1) Households which contain a member who is elderly or disabled as defined in 904 KAR 3:010, Section 1(10) shall have their net income compared to 100 percent of the federal income poverty guidelines.

(2) Households which are categorically eligible as defined in CFR 273.2 do not have to meet either the gross or net income eligibility standards.

(3) All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A standard deduction per household per month. This standard shall be periodically adjusted by FNS to reflect changes in the cost of living for a prior period of time as determined by FNS.

(2) Twenty (20) percent of gross earned income.

(3) Payments for the actual cost for the care of a child or other dependent when necessary for a household member to seek, accept or continue employment or attend training or pursue education preparatory to employment. This deduction shall not exceed the child care maximum established by FNS.

(4) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made. The shelter deduction shall not exceed the excess shelter maximum established by FNS, except that households containing an elderly or disabled member shall not be subject to said maximum with regard to the shelter deduction. The excess shelter maximum shall be adjusted periodically by FNS to reflect changes in the cost of living for a prior period of time. Allowable monthly shelter expenses shall be those expenses outlined in 7 CFR 273.9(d)(5). The cabinet shall develop a standard utility allowance for use in calculating shelter cost for those households which receive LIHEAP benefits or which incur heating/cooling (by air conditioning units only) costs separate and apart from their rent or mortgage payments in accordance with 7 CFR 273.9(d)(6). If the household is not entitled to the utility standard or does not choose to use the utility standard, it may claim actual utility expenses for any utility which it does pay separately. The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

(5) Allowable medical expenses, excluding special diets, in excess of thirty-five (35) dollars per month incurred by any household member who meets the definition of elderly or disabled, as set forth in 7 CFR 271.2, are those meeting the criteria set forth in 7 CFR 273.9(d)(3) including, but not limited to:

(a) Medical and dental care;

(b) Hospitalization or outpatient treatment and nursing care;

(c) Medication and medical supplies;

(d) Health and hospitalization premiums; and

(e) Dentures, hearing aids, eyeglasses and prosthetics.

Section 6. Resources. Uniform national resource standards of eligibility shall be utilized. Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 7 of this regulation and in accordance with 7 CFR 273.8, exceed:

(1) $3000: for all households with one (1) or more members, when at least one (1) member is sixty (60) years or older; or

(2) $2000: for all other households.

(3) Households which are categorically eligible as defined in 7 CFR 273.2 shall be considered as having met the food stamp resource requirement.

Section 7. Exempt Resources. The following resources shall not be considered in determining eligibility:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others.

(2) Household goods, personal effects including one (1) burial plot per household member, the cash value of life insurance policies and pension funds (except that Keogh plans which involve no contractual relationship with individuals who are not household members and Individual Retirement Accounts shall not be

exempt), and prepaid burial plans if a contractual agreement for repayment must be signed in order to withdraw any funds.

(3) Licensed/unlicensed vehicles as specified in 7 CFR 273.8.

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis.

(5) Property which is essential to the employment or self-employment of a household member, in accordance with 7 CFR 273.8(e)(5).

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended.

(8) Resources whose cash value is not accessible to the household.

(9) Resources which have been prorated as income.

(10) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(11) Resources which are excluded for food stamp purposes by express provision of federal statute.

(12) Up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II (effective February 1, 1989).

(13) Income which is withheld by the employer to pay certain expenses directly to a third party as a vendor payment. This income is an excludable resource only if the remainder of the withheld income is not accessible to the household at the end of the year, effective September 1, 1989.

(14) Indian Per Capita payments made pursuant to P.L. 98-64 as distribution from judgment awards and trust funds of $2,000 or less per individual per payment, effective September 1, 1989.

(15) Purchases of $2,000 or less which are made solely with Indian Per Capita payments after December 31, 1981 but prior to January 12, 1983 are totally excluded from resources, effective September 1, 1989.

Section 8. Transfer of Resources. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer in accordance with 7 CFR 273.8(i).

Section 9. Nonfinancial Criteria. Nonfinancial eligibility standards apply equally to all households and consist of:

(1) Residency. A household must live in the county in which they make application;

(2) Identity. Applicant's identity will be verified; also, where an authorized representative applies for the household, both the applicant's and the authorized representative's identities will be verified;

(3) Citizenship and alien status. Program participation shall be limited to either citizens of the United States or eligible aliens, as outlined in 7 CFR 273.4. Individuals whose status is questionable shall be ineligible to participate until such status has been verified;

(4) Household size. Size of household will be verified through readily available documentary evidence or through a collateral contract; and

(5) Students. Persons aged eighteen (18) to sixty (60) who are physically and mentally fit and enrolled at least half time in an institution of higher education are ineligible to participate unless they meet criteria specified in 7 CFR 273.5.

(6) Mandatory monthly reporting (MMR). Households shall be required to file monthly reports in accordance with 7 CFR 273.21 unless otherwise exempted by the appropriate federal agency.

(7) Social security number (SSN). Households applying for or participating in the Food Stamp Program must comply with SSN requirements by providing the SSN of each household member or applying for one (1) prior to certification. Failure to comply without good cause shall be determined for each household member and shall result in such individual's disqualification from participation in the Food Stamp Program until this requirement is met.

(8) Work registration. All household members, except those exempt in 7 CFR 273.7(b), shall be required to register for work, accept suitable employment and be subject to other work registration requirements specified in 7 CFR 273.7. Strikers whose households are eligible in accordance with 904 KAR 3:035, Section 5(9), shall be subject to the work registration requirements unless exempt for reasons other than employment at the time of application.

(9) Quality Control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

Section 10. Provisions contained in this regulation shall become effective December 1, 1989 [January 1, 1989] unless otherwise specified.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: November 20, 1989
FILED WITH LRC: December 1, 1989 at 10 a.m.

REGULATIONS AS AMENDED BY ADMINISTRATIVE BODY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following regulation was amended by the promulgating agency and the Interim Joint Committee on Agriculture and Natural Resources, and became effective on November 22, 1989.

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

401 KAR 4:125. Wild rivers administration.

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

STATUTORY AUTHORITY: KRS 146.270, 224.033, 224.045

NECESSITY AND FUNCTION: KRS 146.270 authorizes the secretary to adopt rules and regulations necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them. KRS 146.220 places emphasis on protecting the aesthetic, scenic, historical, archaeological, ecological and scientific features of these areas. This regulation sets forth guidelines for the administration, management and public use of wild river corridors, including criteria for delineating existing, conforming, permitted and prohibited land uses and conditions of authorization for utility right-of-way construction. This regulation shall apply to all lands and waters under state jurisdiction which are located within designated wild river boundaries as set forth in 401 KAR 4:100. Nothing herein shall be construed as superseding any requirements of other cabinet programs or of other state or federal agencies. This regulation contains the substance of and repeals 401 KAR 4:120.

Section 1. Definitions. As used in this chapter, unless context otherwise requires:

(1) "Agricultural use" means the use of land for agricultural purposes including, but not limited to farming, dairying, pasturage, apiaries, horticulture, floriculture, viticulture, and animal and poultry husbandry; provided that fruit, vegetable and flower production for personal consumption shall not be deemed an agricultural use.

(2) "Buffer zone" means an area of woodland having a minimum width of not less than 100 feet which is retained along each bank of a wild river to maintain aesthetics, bank stability, appropriate water temperatures, fish and wildlife habitat, and stream hydraulics, and to filter debris and water-borne pollutants from surface runoff.

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

(4) "Change of use permit" means a permit issued to a landowner by the secretary to authorize a change of land use within a wild river corridor.

(5) "Commercial service" means the use of a wild river corridor for monetary profit, including, but not limited to, concessions, boat rentals, shuttle services, guided trips or tours, commercial boat docks, wharves and other recreational facilities.

(6) "Conforming use" means a land or resource use which conforms to the provisions and intent of the Kentucky Wild Rivers Act and the management plan developed pursuant to KRS 146.270 for a given wild river corridor.

(7) "Existing use" means a land use which is in existence at the time a wild river is designated by the Kentucky General Assembly.

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

(9) "Management plan" means the individual plan adopted by the cabinet pursuant to KRS 146.270 as the official document guiding the management and protection of a given wild river corridor.

(10) "Permitted use" means a nonconforming land use within a wild river corridor which has been authorized by the secretary through the issuance of a change of use permit.

(11) "Research plan" means a plan of action submitted to the cabinet for approval prior to initiating a scientific study within a given wild river corridor.

(12) "Resource removal" means exploration for, extraction or removal of a natural resource including, but not limited to, coal, oil and gas, minerals, rock, gravel, sand and soil.

(13) "Secretary" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(14) "Selective cutting (of timber)" means the selective removal during one entry of trees from an area such that a specified minimum residual stocking level is retained and evenly distributed over the harvest area. A selective cut creates or maintains an uneven-aged stand of timber.

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

(16) "Visual intrusion" means resulting in the disruption, degradation or impairment of the natural or primitive appearance of an area in a wild river corridor, as viewed from the river or other designated public use area, and includes any land use that does not remain visually subordinate to the characteristic landscape.

(17) "Wild river" or "Wild river corridor" means a stream segment and adjacent shoreland within boundaries set forth in 401 KAR 4:100 which are designated in accordance with KRS 146.241.

Section 2. General Policy. (1) Wild rivers shall be managed to preserve their free-flowing condition and to protect the outstanding and unique aesthetic, scenic, recreational, fish and wildlife, botanical, historical, archeological and other natural and cultural features which qualified the streams for designation as wild rivers.

(2) Additional management objectives shall be to afford opportunities to enjoy natural streams and to preserve for future generations the beauty of certain areas untrammeled by man. The cabinet will not encourage public use of areas where it has been determined that the carrying

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

Section 3. Management Plans. (1) The management of a given wild river corridor shall be according to a management plan developed by the cabinet.

(2) The cabinet shall consult with landowners in the affected wild river corridor, citizen groups, industries and appropriate local, state and federal agencies in the preparation of each management plan.

(3) Public participation in the development of a management plan shall be provisioned by at last one (1) public hearing on the draft management plan followed by a thirty (30) day comment period prior to finalizing the plan.

(4)(a) The hearing, or hearings, shall be conducted in one (1) of the counties through which the designated portion of the river flows;

(b) Notice of hearing shall be given in accordance with the provisions of KRS Chapter 424. The notice shall:

1. State the time, place and purpose of the hearing;

2. State the name and address of the person from whom a copy of the proposed management plan may be attained;

3. Be published not less than seven (7) nor more than twenty-one (21) days prior to the hearing;

4. Be published in the county, or counties, through which the designated portion of the river flows, and in at least one (1) major newspaper; and

5. Set forth the address to which written comments on the draft management plan may be submitted,and the date by which those written comments shall be submitted.

(c) The hearing shall be conducted by a designated representative of the cabinet who shall control the order of presentation;

(d) Any interested person may appear at the hearing and make an oral or written presentation concerning the draft management plan. All oral presentations shall be recorded; and

(e) All written and oral comments shall be considered in the development of the management plan.

(5) Responsibility for the administration and management of a wild river shall be clearly delineated in the management plan for that river, and any management agreements between the cabinet and local, state or federal agencies having overlapping jurisdiction over lands or waters within the wild river corridor shall be incorporated into the plan.

Section 4. Existing or Conforming Land Uses. (1) Under the provisions of KRS 146.290, land uses which are lawfully existing at the time the boundaries of a wild river are designated may continue even though the use does not conform to the purpose and intent of the Kentucky Wild Rivers Act or the management plan for a given wild river.

(2) Other than existing uses, land uses within wild river corridors which conform to the purposes and intent of the Kentucky Wild Rivers Act and the duly adopted management plan for each wild river shall not require a change of use permit.

(3) Conforming uses shall include wilderness type recreation such as **nonmechanized** [nonmotorized] boating, hiking, hunting, fishing, camping, sightseeing and horseback riding, as well as scientific research, environmental education and related activities which preserve the primitive character and natural and cultural resources of the area.

(4) Other land uses shall qualify as conforming uses if they do not involve the clearing of more than one-half (1/2) acre of timber, nor constitute a significant visual intrusion within 100 feet of the river. Conforming uses may include the following:

(a) The routine maintenance, repair, renovation or replacement of existing roads, buildings or other structures or improvements to an existing use;

(b) The selective cutting of firewood or individual trees by a landowner for personal or family use;

(c) Landscaping and gardening, including flower, fruit and vegetable production;

(d) Fencing;

(e) The removal of noxious weeds from an area using direct application but not aerial spraying, and herbicides that are short-term, nontoxic to fish and wildlife and will not leach into surface waters or groundwater; and

(f) The clearing of diseased or insect-infested trees from an area greater than one-half (1/2) acre upon written authorization from the cabinet based on the recommendation of a professional forester.

Section 5. Permitted Land Uses. (1) Land use changes authorized by the cabinet through a change of use permit as required under KRS 146.290, shall comply with all applicable standards set forth in 401 KAR 4:140;

(2) Land use changes which require a change of use permit shall include:

(a) A resource removal, by methods other than surface mining;

(b) The selective cutting of timber as defined in Section 1 of this regulation; and

(c) A new agricultural use that requires clearing of timber from an area greater than one-half (1/2) acre or more in extent.

Section 6. Prohibited Land Uses. (1) Pursuant to KRS 146.290, surface mining, timber harvest by methods other than selective cutting and in-stream disturbances are prohibited within a wild river corridor;

(2) Prohibited in-stream disturbances shall include but not be limited to, dam construction, dredging, spoil or fill deposition, channel diversion, channelization and mining of streambed materials; and

(3) The construction of roads, buildings or other structures to effect any use other than an existing or permitted land use, as set forth in Section 4 or Section 5 of this regulation, is prohibited.

Section 7. Public Use. (1) Public use of wild river corridors shall be limited to the public waters and public lands or interests in lands acquired through lease, easement or other agreement entered into by the landowner. Public use of private property shall require permission from the landowner. Trespassing is subject to penalty as set forth in KRS 146.990. This section applies to the public use of state-owned lands and public waters within wild river corridors.

(2) The cabinet will make every effort to

inform the public that the wild river designation does not authorize public use of privately-owned lands, and will prepare maps delineating the boundaries of public lands within wild river corridors to reduce unintentional trespassing.

(3) In accordance with KRS 146.290, transportation shall be by foot, canoe, kayak, boat, with or without electric motor, horseback or other nonmechanized [nonmotorized] means except on existing public roads, as required for administrative and resource protection purposes, or as necessary to effect an existing or permitted land use.

(4) The cabinet may condition or deny public access to a wild river if such use is causing substantial adverse impact on the scenic, aesthetic, natural, cultural, scientific or recreational resources, if private property is being damaged, or if user safety is being jeopardized.

(5) Cultural artifacts, relics, fossils and souvenirs shall not be removed from their site of discovery in a wild river corridor. Deliberate damage to plants, animals, artifacts or other special features is prohibited. A written request shall be submitted to and approved by the division prior to the collection of any natural or cultural materials.

(6) Burying, dumping or depositing litter, soil, garbage, waste, scrap or other unsightly or offensive materials other than in receptacles provided for this purpose is prohibited.

(7) Horseback riding shall be allowed only on trails specifically designated for this use.

(8) Overnight camping and campfires shall be prohibited within thirty (30) feet of a wild river. No open fire shall be left unattended, and all fires shall be completely extinguished after use. Live vegetation shall not be cut for firewood.

(9) Camping within a state park shall be in accordance with 304 KAR 1:040.

(10) Hunting, fishing and trapping shall be subject to state and federal fish and wildlife laws and regulations, and shall comply with the following conditions:

(a) The construction of permanent shelters, lean-tos or other buildings is prohibited. Temporary blinds, stands or other structures shall be erected in a manner that will prevent injury to trees; and

(b) Trapping is prohibited within fifty (50) feet of designated boat access sites, boat portage trails and other designated public hiking trails, picnic areas and campgrounds.

(11) Carrying or discharging a firearm, bow and arrow or explosive substances shall be prohibited for any purpose other than hunting in accordance with state wildlife laws and the other provisions of this regulation.

(12) Swimming and other in-stream recreational uses of a wild river shall be in accordance with Division of Water Patrol safety standards (402 KAR 4:080 and 4:130). Entering a wild river from the shores of a state park for swimming, bathing or other in-stream recreational use shall be allowed only in areas designated as swimming areas by the Department of Parks.

(13) Conduct which disturbs the peace or causes property damage within a corridor is prohibited.

(14) Public users of wild rivers are encouraged to leave in passing no mark upon the land that might diminish its value to another, and to make every effort to protect and enhance the unspoiled beauty of these areas as components of Kentucky's unique heritage.

Section 8. Enhancement of Recreational Opportunities. (1) The development of public access to a wild river will be compatible with the purposes and intent of KRS 146.200 to 146.360 and the duly adopted management plan for a given river, and shall conform to the natural character of the area.

(2) Development of public access may be used to enhance dispersed, nonmechanized [nonmotorized] recreational opportunities and provide information on safety, orientation, rules and regulations and interpretation of special features in the area.

(3) Trails constructed within a wild river corridor will be designed and maintained to provide for nonmechanized [nonmotorized] recreational uses and to prevent soil erosion and compaction, trampling of vegetation, and other damage to the natural beauty and resources of the area.

(4) There shall be no cutting or removal of natural vegetation, living or dead, to create scenic vistas, except as expressly provided by law.

Section 9. Commercial Uses. (1) The operator of a new commercial service within a wild river corridor shall submit written notification to the cabinet not less than thirty (30) days prior to commencing such use.

(2) The construction of access roads, ramps, wharves or boat docks, buildings or other facilities required to effect a commercial use shall be located outside of a wild river corridor unless authorized by a change of use permit.

(3) The operator of a commercial service on a wild river shall comply with all applicable provisions of this regulation, and shall be responsible for ensuring that the commercial use does not impair or contribute to an adverse impact on the aesthetic, scenic, ecological, scientific, recreational or other significant features in the corridor as identified in the management plan or by the cabinet, or cause substantial damage to soils, vegetation, fish and wildlife or water quality.

(4) The cabinet may condition or deny commercial use of a wild river, as provided in Section 7(4) of this regulation.

(5) In accordance with 304 KAR 1:030, operation of a commercial activity within a state park requires prior written consent from the Department of Parks.

(6) Commercial harvest of mussels by any method is prohibited in areas where mussel species considered endangered or threatened by the Kentucky Academy of Science are known to occur.

Section 10. Scientific Study. (1) A research plan shall be submitted to the cabinet for approval prior to the commencement of any scientific study that may affect a wild river corridor.

(2) A research plan submitted to the cabinet on a form supplied by the cabinet shall contain the following information:

(a) The name, address, telephone number, professional affiliations and qualifications of the principal investigator;

(b) A U.S. geological survey 7.5 minute topographic map delineating the location and extent of the study area;
(c) The estimated dates of initiation and completion of the study;
(d) The objectives, methods and significance of the study and a statement as to the necessity or advantages of conducting the study within the wild river corridor;
(e) Plant or animal species or any special features which may be affected by the study, and the type and extent of any such effects; and
(f) A list of any plants, animals or other resources or materials to be collected, the estimated quantity to be collected, and the permit numbers of collection permits obtained from state and federal agencies.

Section 11. Utility Right-of-way Construction. (1) As set forth in KRS 146.290, the construction of a transmission line or pipeline right-of-way within any portion of a wild river corridor shall require written approval from the secretary prior to the initiation of any construction activities within the wild river boundaries.
(2) Authorization to construct a right-of-way shall require application by the owner of the utility or pipeline company or their engineering representatives, on an application form supplied by the cabinet. The application shall include a land use plan containing the following information:
(a) A U.S. geological survey topographic map to scale not greater than one (1) inch equal to 500 feet, showing the precise route and dimensions of the right-of-way;
(b) The estimated dates for initiation and completion of construction and the name, address and telephone number of the person or persons in charge of the construction;
(c) A detailed description of the methods of construction and specifications, including profile sheets bearing the seal and signature of a registered professional engineer;
(d) A statement of possible alternate routes for the right-of-way and why the proposed route was selected;
(e) A detailed reclamation plan designed to return the disturbed area as nearly as possible to its former appearance and condition, including the use of native species to revegetate disturbed areas; and
(f) A detailed description of proposed methods for maintaining the right-of-way, including the brand names and methods of application of any herbicides to be used.
(3) Upon receipt of an application, an inspection of the proposed construction site will be made by cabinet personnel with the property owner and applicant or their representatives, and personnel from appropriate state and federal agencies.
(4) The secretary shall notify the applicant as to whether the application is approved or denied within sixty (60) days following receipt of the application, and will state the reasons for the decision.
(5) If an application is denied, the applicant may submit a revised application to adequately address the reasons for denial stated in the secretary's written decision.
(6) An application will be approved only if there is no possible alternative route for the right-of-way that would bypass or cause less impact to the wild river corridor, and the applicant agrees to restore all disturbed area within the wild river corridor as nearly as possible to its former appearance and condition, as required under KRS 146.290.
(7) Authorization to construct a right-of-way shall contain, but not be limited to, the following conditions:
(a) Wherever feasible, the right-of-way shall be routed to avoid steep slopes, erodable soils, surface waters and areas with high water tables, public recreation areas, and other significant natural and cultural areas identified by the cabinet, and shall be the minimum width necessary for construction and maintenance;
(b) Adequate measures shall be taken to control sediment and any hazardous substances, and to minimize the visual impact of the right-of-way when viewed from the wild river or other designated public use areas;
(c) Any timber cutting required shall be according to the provisions of 401 KAR 4:140, Sections 4 through 7, and 9 through 14 and Section 17(10) through (21);
(d) Every effort shall be made to minimize disturbance to the streambed, stream banks and fish and wildlife habitat during construction activities, and to keep timber slash and other debris out of surface waters and the immediate floodplain;
(e) Stream crossings by equipment or vehicles in a wild river corridor shall require the use of a temporary bridge or other methods approved by the cabinet and be designed so as not to impede stream flow. Construction across surface waters shall occur when local fish and wildlife are not spawning or nesting;
(f) Vehicles and equipment shall be stored outside of the wild river corridor when not in use;
(g) Aerial spraying of herbicides shall not be permitted within the boundaries of a wild river. Direct application of herbicides at ground level shall be limited to brands that are nontoxic to fish and wildlife;
(h) Pipeline relief valves shall be located outside of the wild river corridors;
(i) Primary consideration shall be given to underground placement of transmission lines and pipelines. Overhead transmission lines and towers shall be in accordance with environmental guidelines required by the Rural Electrification Authority, and shall be designed so as to prevent electrocution or other injury to wildlife;
(j) Reclamation shall consist of establishing a permanent vegetative cover on all disturbed surfaces, planting native trees or shrubs where necessary to establish a buffer zone along the banks of the wild river, implementing measures to prevent access by off-road vehicles, and removing all evidence of construction activities;
(k) A performance bond, in an amount to be determined by the cabinet, shall be required for reclamation if the cabinet determines that the proposed construction may potentially damage, degrade or otherwise have an adverse impact on any significant feature known to occur within the wild river corridor.
(l) The applicant shall provide written notice to the cabinet upon completion of reclamation, and cabinet personnel will inspect the construction site to verify compliance with all permit conditions before the bond is released.

Section 12. Road Construction. (1) In accordance with KRS 146.290, new permanent roads shall not be constructed within a wild river corridor except as authorized by the secretary to enhance recreational opportunities or to protect soil, water or other natural resources.

(2) Temporary roads shall be constructed within a wild river corridor only as necessary to effect a use authorized by a change of use permit, and shall be closed and reclaimed immediately after the permitted land use is concluded.

(3) Any construction required to improve, repair or replace existing state or county-maintained roads or bridges shall require full environmental review by the division and other appropriate state natural resource agencies prior to any construction activity.

(4) During authorized construction activities, no heavy equipment shall be driven through or into a wild river unless every feasible precaution has been taken by the operator to prevent damage to streambank vegetation, protect fish and wildlife habitat, control soil erosion and prevent stream sedimentation.

(5) When recommended by the secretary, design plans for improving or replacing a bridge across a wild river shall consider provisions for enhancing public access to the river for recreational uses consistent with the provisions of KRS 146.200 to 146.360.

Section 13. Agency Notification. (1) State or local government agencies which engage in or regulate any activity within the watershed of a wild river shall notify the cabinet prior to the initiation of any activity which may adversely affect the river, and shall provide the cabinet an opportunity to review proposals and plans for the new activity.

(2) A change of land use on state-owned lands within a wild river corridor that does not conform with the purpose and intent of KRS 146.200 to 146.360 shall require that the state agency that owns the affected land obtain a change of use permit from the cabinet.

Section 14. Fire Control. (1) State fire control provisions of KRS Chapter 149, and any which may be established by cooperative agreement, shall be strictly enforced.

(2) Fire shall be controlled by methods that require the least disturbance to soils and vegetation, and use of heavy equipment shall be limited to situations where an eminent threat to life or personal property exists. Any fire hazard reduction or replanting after fire shall be coordinated with the division.

Section 15. Signs. (1) The posting of commercial signs, advertisements, announcements, campaign slogans or other written messages other than those related to permitted uses shall be prohibited.

(2) As otherwise allowed by law, signs may be installed by the management agency, local government, landowner or public utility for the purpose of public safety, posting of property boundaries or property protection, identification of river corridor boundaries and public access points or as otherwise deemed necessary for resource protection, interpretation or regulatory purposes.

(3) Signs shall be of a design and construction conforming to the natural setting in which they are located, and shall not exceed sixteen (16) square feet in size.

(4) Any person with the permission of the landowner may post informational and directional signs within a corridor as are necessary to the continuance of an existing use.

Section 16. Enforcement and Hearings. (1) Whenever the cabinet has reason to believe a violation of 401 KAR Chapter 4 has occurred, a notice of violation shall be issued.

(2) The provisions of KRS 224.081 shall apply to any cabinet order or determination made pursuant to the provisions of 401 KAR Chapter 4.

(3) Hearings required to be conducted due to the issuance of a notice of violation issued pursuant to subsection (1) or the filing of a petition pursuant to subsection (2) of this section shall be conducted pursuant to KRS 224.083.

(4) Appeals may be taken from any final order of the cabinet pursuant to KRS 224.085.

(5) Violations of the provisions of 401 KAR Chapter 4 shall be liable to the civil penalty set forth in KRS 146.990(1).

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

Section 17. Severability. In the event that any provision of KRS 146.200 to 146.360 or any regulation promulgated pursuant hereto is found to be invalid by a court of competent jurisdiction, the remaining wild rivers regulations shall not be affected or diminished thereby.

Section 18. Repeal. 401 KAR 4:120 is hereby repealed.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: August 8, 1989
FILED WITH LRC: August 14, 1989 at 10 a.m.

COMPILER'S NOTE: The following regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on December 11, 1989, and have not yet gone into effect.

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

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 **with a total capacity of 7,500 gallons or larger** - $7,400 [11,000];
(b) Tanks with a total capacity less than 7,500 gallons - $3,700;
(c) [(b)] A fee of $4,400 shall be paid where [for each] additional tanks of similar [varying] design have a combined capacity greater than 7,500 gallons, and $1,850 for additional tanks with a combined capacity less than 7,500 gallons.
(5)(a) Containers with a capacity greater than or equal to 5,000 gallons - $6,000 [7,700];
(b) Containers with a capacity less than 5,000 gallons - $3,000;
(c) [(b)] A fee of $3,000 shall be paid where [for each] additional containers of similar design have a combined capacity greater than 5,000 gallons and $1,500 for additional containers with a combined capacity less than 5,000 gallons [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.]

(1) 100 or more solid waste management units - $11,500;
(2) Sixty (60) to ninety-nine (99) solid waste management units - $9,000;
(3) Twenty (20) to fifty-nine (59) solid waste management units - $6,500; or
(4) Less than twenty (20) solid waste management units - $4,000.

Section 5. RCRA Facility Investigation Fees and Corrective Action Fees. Any owner or operator who submits an application for a treatment, storage, or disposal facility that includes a RCRA facility investigation or corrective action studies or plans, shall submit a RCRA facility investigation corrective action fee upon request from the cabinet. The RCRA facility investigation fee shall be the cost of the review, but shall not exceed $14,500. The corrective action fee shall be the cost of the review, but shall not exceed $29,000.

Section 6. [5.] Submittal of Fees. All fees shall be paid by check or money order made payable to the Kentucky State Treasurer.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: November 9, 1989
FILED WITH LRC: November 10, 1989 at 10 a.m.

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

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 a new waste for treatment, storage or disposal facilities when the waste is hazardous by characteristic and a waste stream with the same characteristic is already permitted, the fee shall be $300 per waste stream.

(b) [(a)] For the addition of other new wastes for treatment, storage or disposal facilities:

1. Tanks - $3,400 [3,600] [4,000];
2. Surface impoundments - $5,000;
3. Waste piles - $4,500;
4. Incinerators - $6,500;
5. Containers - $2,700 [3,200] [3,500];
6. Land treatment - $5,500; and
7. Landfills - $5,500.

(c) [(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 with a total capacity of 7,500 gallons or greater - $7,400 [8,745] [13,250];
2. Tanks with a total capacity less than 7,500 gallons - $3,700;
3. [2.] Containers with a total capacity of 5,000 gallons or greater- $6,000 [8,200] [10,700];
4. Containers with a total capacity less than 5,000 gallons - $3,000;
5. [3.] Incinerators - $19,400 [20,000];
6. [4.] Landfills - $15,000 [16,250];
7. [5.] Land treatment - $15,800 [16,250];
8. [6.] Waste piles - $12,200 [14,000]; and
9. [7.] Surface impoundments - $14,000 [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 with a total capacity of 7,500 gallons or greater - $3,400 [3,950] [6,000];
2. Tanks with a total capacity less than 7,500 gallons - $1,700;
3. [2.] Surface impoundments - $6,300 [7,000];
4. [3.] Waste piles - $5,500 [6,500];
5. [4.] Incinerators - $8,500;
6. [5.] Containers with a total capacity of 5,000 gallons or greater - $2,700 [4,200] [5,500];
7. Containers with a total capacity less than 5,000 gallons - $1,700;
8. [6.] Land treatment - $7,100 [7,500]; and
9. [7.] Landfills - $6,800 [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 for [except the fees for modification of] RCRA facility investigations and [the] corrective action shall be submitted to the cabinet **upon request from the cabinet. All other fees** [with the application for modification. The major modification fees for RCRA facility investigations and corrective action] shall be submitted to the cabinet with the application for modification [upon request from the cabinet]. The checks shall be made payable to the Kentucky State Treasurer.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: November 9, 1989
FILED WITH LRC: November 10, 1989 at 10 a.m.

COMPILER'S NOTE: The following regulation was amended by the promulgating agency and the Interim Joint Committee on Agriculture and Natural Resources, and became effective on November 22, 1989.

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 **acknowledging that the surface owner understands that the operator has no responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.** [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 within ten (10) working days. 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.

COMPILER'S NOTE: The following regulation was amended by the promulgating agency and the Administrative Regulation Review Subcommittee on December 11-12, 1989, and have not yet gone into effect.

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

603 KAR 5:050. Uniform traffic control devices.

RELATES TO: KRS 189.337
STATUTORY AUTHORITY: KRS 189.337
NECESSITY AND FUNCTION: KRS 189.337(2) requires [authorizes] the Transportation Cabinet, Department of Highways, to adopt a uniform system of traffic control devices. This regulation defines the system.

Section 1. The standards and specifications set forth in the Federal Highway Administration publication "Manual on Uniform Traffic Control Devices for Streets and Highways" [(1978 Edition, and subsequent amendments thereto)] shall apply to all traffic control devices installed on any publicly used highway, road or street in Kentucky. [Satisfactory operating traffic control devices in use on the effective date of this regulation may continue to be used; however, if such devices are replaced or revised, they must be made to conform with the standards and specifications of the manual.]

Section 2. A copy of the Federal Highway Administration publication "Manual on Uniform Traffic Control Devices for Streets and Highways 1988 Edition" revised [with an effective date of] January 23, 1989 [(1978 Edition and Revisions No. 1, No. 2, No. 3 and No. 4 dated December, 1979, December, 1983, September, 1984, and March, 1986 respectively)] is hereby incorporated by reference as part of this regulation.

Section 3. Copies of the Federal Highway Administration publication "Manual on Uniform Traffic Control Devices for Streets and Highways" may be viewed or copied at the Transportation Cabinet, Department of Highways, Division of Traffic in Frankfort, Kentucky from 8 a.m. until 4:30 p.m. weekdays. Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 [or at any highway district office].

O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: September 25, 1989
FILED WITH LRC: October 6, 1989 at 11 a.m.

REGULATIONS AMENDED AFTER HEARING

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

401 KAR 5:026. Classification of waters.

RELATES TO: KRS Chapter 224[.020, 224.060]
STATUTORY AUTHORITY: KRS 224.020, 224.033, 224.037, 224.060, 33 U.S.C. 1313 [(17)]
NECESSITY AND FUNCTION: This regulation applies the use classifications found in [Sections 4, 5, 6, and 7 of] 401 KAR 5:031 to the surface waters of the Commonwealth. This regulation also makes all surface waters subject to the general criteria specified in Section 2 of 401 KAR 5:031. Definitions for terms used in this regulation are found in 401 KAR 5:029.

Section 1. Classification to Designated Uses. Surface waters classified under this regulation shall be designated for all legitimate uses listed in KRS 224.020(1) except as specified in 401 KAR 5:031, Section 5 or [.] until reclassified in accordance with the procedures of this regulation. Classified waters shall meet all criteria applicable to their designated uses and those criteria listed in Section 2 of 401 KAR 5:031, unless [, the criteria which are indicated for these classifications shall be applicable in all cases unless otherwise ordered by] the cabinet grants an exception pursuant to 401 KAR 5:031, Section 8. Outstanding resource waters may have unique water quality characteristics which shall be maintained by additional criteria adopted by the cabinet pursuant to 401 KAR 5:031, Section 7.

Section 2. Reclassification. (1) Surface [The reclassification of] waters may be reclassified [of the Commonwealth which establishes a different classification than is established under this regulation shall be adopted] only upon affirmative findings by the cabinet pursuant to Sections 5 and 6 of this regulation. Before reclassifying any surface water [Prior to adding or removing any use], the cabinet shall provide notice and an opportunity for a public hearing.

(2) In reclassifying any surface water [body], the cabinet shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream surface waters.

(3) A use shall not be removed for a surface water [body] if that use is an existing use [currently being attained], or if the [such] use may [s will] be attained by implementing effluent limitations required under Sections 301(b) and 306 of the Clean Water Act and [401 KAR 5:035, [and] 401 KAR 5:045, 401 KAR 5:065 or 401 KAR 5:080 or] [and] by implementing cost-effective and reasonable best management practices for nonpoint source control.

(4) If a surface water [body] is designated for a [more stringent] use that [than] is not an existing use [currently being attained], the cabinet shall reclassify the surface water [body] upon demonstration that the designated use is unattainable because: [due to natural background or [;] irretrievable person-induced conditions; or because [that] existing ["]point["] sources would have to be controlled beyond the most stringent effluent limitation levels required for such sources under 401 KAR 5:035, [and] 401 KAR 5:045, 401 KAR 5:065, or 401 KAR 5:080 and imposition of these [such] extra controls would result in substantial and widespread economic and social impact.]

(a) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges; or

(c) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(d) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate such modification in a way that would result in the attainment of the use; or

(e) Physical conditions related to the natural features of the surface water, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of the aquatic life use; or

(f) Controls more stringent that those required by Sections 301(b) and 306 of the Clean Water Act would result in substantial and widespread economic and social impact.

(5) Reclassifications [Implementation of this section] will be consistent with the nondegradation requirements of 401 KAR 5:029, Section 2.

Section 3. Priority for Implementation. [Except as provided in subsection (4) of this section, the] Priorities for reclassification of the surface waters of the Commonwealth are:

(1) Surface waters receiving [(]or proposed to receive[)] discharges from a POTW [publicly-owned treatment works and/] or serving as public water system [supply] sources have first priority in the following order [in the following order of priority]:

(a) Any local unit of government with a pending [public] construction permit application for installation or upgrading of a POTW [sewage treatment plant and/]or public water system treatment plant.

(b) Any local unit[s] of government in the cabinet's [201] construction grants program administered pursuant to 33 U.S.C. 1281 for installation or upgrading of a POTW [sewage treatment plant,] in an order of priority consistent with its [their] priority project list rank.

(c) Any local unit[s] of government which requests consideration prior to [their] entering its [into either their] own construction project, applying for an [a] NPDES or KPDES permit [action], or applying for participation in the cabinet's [the 201] construction grants program administered pursuant to 33 U.S.C. 1281 for installation or upgrading of a POTW [sewage

treatment plant].

(d) Other local units of government, on a first-come, first-served basis.

(2) Surface waters receiving [(]or proposed to receive[)] discharges from any other [(private or semipublic)] treatment works shall have second priority in the following order [of priority]:

(a) Applicants for new or modified NPDES or KPDES permits for discharges [applicants or proposed NPDES or KPDES permit modifications] to surface waters [waterways] which may potentially be classified for [a beneficial use of] cold-water aquatic habitat.

(b) All other surface waters [segments] with point source dischargers [private or semipublic facilities,] on a first come, first served basis.

(3) Reclassifications for all other surface waters which do not have any existing or proposed point source dischargers have third priority.

(4) These priorities may be varied by order of the cabinet [in a particular case pursuant to an administrative hearing].

Section 4. Responsibility for Providing Documentation. The following entities are responsible for providing the documentation for the reclassification of the surface waters under this regulation. The required documentation is listed [outlined] in Section 5 of this regulation.

(1) The cabinet will [shall] provide supporting documentation for the reclassification of surface waters on which are located [(]or proposed to be located[)] facilities which are either:

(a) POTWs [Publicly-owned treatment works]; or

(b) Outstanding resource waters on publicly owned land; or

(c) Applicants for new or modified NPDES or KPDES permits [applicants or proposed NPDES or KPDES permit modifications] for discharges to surface waters which may potentially be classified as [for a beneficial use of] outstanding resource waters.

(2) Any applicant filing for reclassification of surface waters in circumvention of the priority system contained in Section 3 of this regulation shall provide the cabinet with classification documentation. [for waters on which discharges from private or semipublic treatment works are located (or proposed to be located). In these cases] The applicant has [sustains] the burden of proof that the reclassification is appropriate and necessary.

(3) The cabinet will [shall] provide documentation for all other surface waters which do not have any existing or proposed point source dischargers.

Section 5. Required Documentation. [This section outlines the] Documentation which shall be required to support the reclassification of a surface water of the Commonwealth is as follows:

(1) A United State Geological Survey [USGS] 7.5 minute topographic map [will be prepared] showing those surface waters [or stream segments] to be reclassified, with [.] a description consisting of a river mile index with any existing and proposed discharge points;

(2) Existing uses and water quality data for the surface [proposed] waters [or stream segments] for which the reclassification is proposed. Where adequate data are unavailable, additional studies may be required by the cabinet;

(3) Descriptions of general land uses (e.g., mining, agricultural, recreation, low, medium, and high density residential commercial-industrial, etc.) and [as well as] specific land uses adjacent to the surface waters [for the length of the segment] for which the reclassification is proposed;

(4) The existing and designated uses of the downstream [receiving] waters into which the surface water [segment] under consideration discharges [and the downstream uses of those receiving waters];

(5) General physical characteristics of the surface water [stream segment] including, but not limited to width, depth, bottom composition, and slope;

(6) The frequency of occasions when there is no natural flow in the surface water and the 7Q10 and harmonic mean flow values for the surface water and [segment, the low flow in the segment and low flow in] adjacent surface waters; [segments.]

(7) An assessment of the existing and potential aquatic life habitat in the surface waters [stream segment] under consideration and the adjacent upstream surface waters [segment]. The existing aquatic life shall [in the area must] be documented and [as well as an assessment of] livestock and natural wildlife dependence on [upon] the surface water shall be assessed [stream segment]. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota shall [must] be documented;

(8) The [existing and] proposed designated uses for the surface water [stream segment(s)] in question; and

(9) [Information must be supplied pursuant to Section 2 of this regulation, specifically:

(a)] An explanation of the irretrievable person-induced, or natural conditions which preclude attainment of a higher use designation[;] or

[(b)] an assessment of the substantial and widespread social and economic impacts resulting from the imposition of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for such sources.

Section 6. Procedures for Reclassification. This section outlines the procedures for evaluating proposed [by which] use reclassifications [will be assigned. Procedures for reclassification of a water of the Commonwealth shall be initiated and considered in the order of priority specified in Section 3 of this regulation].

(1) For each of the surface waters for which a reclassification is proposed, the cabinet or applicant [as defined in Section 4(2) of this regulation,] shall prepare a fact sheet containing, but not limited to, the following information:

(a) The name and address of the applicant;

(b) The name and sketch or description of the surface water proposed for specified use reclassifications, including the location of existing and proposed dischargers;

(c) The proposed use classifications;

(d) A brief abstract of the supportive documentation which demonstrates that the [said] reclassification is appropriate;

(e) The appropriate water quality criteria for the surface water [segment(s)] based on the proposed designated use(s);
(f) The treatment requirements proposed for discharges to the surface water in question if designated for the proposed use(s);
(g) A "plain English" summary of the implications of such designation for the community and other users or potential users of the surface water in question;
(h) The procedure by which the designation will be made.
(2) Based upon all available information, the staff shall make its recommendation of use classifications of the surface waters in question to the secretary of the cabinet.
(3) The secretary shall have [cause to be prepared] a list of surface waters [segments] and their classification prepared to be published as an administrative regulation.
(4) Upon completing [the review period and] the procedure for promulgation of [under] administrative regulations set forth in KRS Chapter 13A [rule making], all designated surface waters and their use classifications shall be listed in [Section 7 of] this regulation.

Section 7. Surface Water [Stream] Use Classifications. (1) Listed in the tables below are the use classifications for specific surface waters of the Commonwealth. The county column indicates the county in which the mouth or outlet of the surface water [stream] is located. The identifying symbols for use classifications are as follows:

WAH - Warm Water Aquatic Habitat
CAH - Cold Water Aquatic Habitat
PCR - Primary Contact Recreation
SCR - Secondary Contact Recreation
DWS - Domestic Water Supply (applicable at existing points of public water supply withdrawal)
ORW - Outstanding Resource Water

(2) Surface waters not specifically listed in this section are designated for the use of warm water aquatic habitat, primarily contact recreation, secondary contact recreation and domestic water supply in accordance with Section 1 of this regulation.
(3) Exceptions to specific criteria [listed to protect use classifications] in 401 KAR 5:031 which apply to particular surface waters are shown in the tables of surface water [stream] use classifications in this section. All other criteria in 401 KAR 5:031 applicable to the listed use classifications [also] apply to these surface waters [streams].

LIST OF DESIGNATED SURFACE WATER USE CLASSIFICATIONS

Stream	Zone	County	Use Classification	Exceptions to Specific Criteria
	BIG SANDY RIVER BASIN			
Big Sandy River	River Mile 26.8 to Ohio River	Boyd	WAH, PCR, SCR	
Hood Creek	Source to Wheeler Branch	Lawrence	WAH [CAH], PCR, SCR	
Levisa Fork Big Sandy River	Kentucky-Virginia State Line River Mile 147.5 (Headwaters of Fishtrap Lake)	Pike	WAH, PCR, SCR, DWS	
Levisa Fork Big Sandy River	Fishtrap Lake Dam to Big Sandy River	Lawrence	WAH, PCR, SCR, DWS	
Russell Fork Big Sandy River	Kentucky-Virginia State Line (River Mile 15.9) to Levisa Fork	Pike	WAH, PCR, SCR, DWS	
Tug Fork Big Sandy River	Kentucky-Virginia State Line (River Mile 94.0) to Big Sandy River	Lawrence	WAH, PCR, SCR, DWS	
Lakes/Reservoirs				
Dewey	Entire reservoir	Floyd	WAH, PCR, SCR, DWS	
Fishtrap	Entire reservoir	Pike	WAH, PCR, SCR, DWS	
Paintsville	Entire reservoir	Johnson	WAH, CAH, PCR, SCR	
	LITTLE SANDY RIVER BASIN			
Big Caney Creek	Source to Grayson Lake	Elliott	CAH, PCR, SCR	
Big Sinking Creek	River Mile 6.0 to Little Sandy River	Carter	CAH, PCR, SCR	
Laurel Creek	Source to Little Sandy River	Elliott	CAH, PCR, SCR	

Little Sandy River	Source to River Mile 71.1 (Headwaters of Grayson Lake)	Elliott	WAH, PCR, SCR, DWS
Little Sandy River	River Mile 50.0 (Grayson Lake Dam) to Ohio River	Greenup	WAH, PCR, SCR, DWS
Lakes/Reservoirs			
Grayson	Entire Reservoir	Carter	WAH, PCR, SCR
Greenbo	Entire Reservoir	Greenup	WAH, CAH, PCR,SCR, DWS
	TYGARTS CREEK BASIN		
Buffalo Creek	Source to Tygarts Creek	Carter	WAH, PCR, SCR
Little White Oak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR
Tygarts Creek	Source to Ohio River	Greenup	WAH, PCR, SCR, DWS
White Oak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR
	LICKING RIVER BASIN		
Burning Fork	Basin	Magoffin	WAH, PCR, SCR
Craney Creek	Source to North Fork Licking River	Rowan/Morgan	CAH, PCR, SCR
Fleming Creek	Source to Licking River	Nicholas	WAH, PCR, SCR
Licking River	River Mile 169.6 to Ohio River	Kenton/Campbell	WAH, PCR, SCR, DWS
Licking River	River Mile 176.8 (Cave Run Lake Dam) to River Mile 169.6 (U.S. Highway 60 Bridge)	Bath/Rowan	CAH, PCR, SCR, DWS
Licking River	Source to River Mile 218.2 (Headwaters of Cave Run Lake)	Morgan	WAH, PCR, SCR, DWS
North Fork Licking River	Source to Licking River	Pendleton/ Bracken	WAH, PCR, SCR, DWS
Slate Creek	Source to Licking River	Bath	WAH, PCR, SCR, DWS
South Fork Licking River	River Mile 65.1 to Licking River	Pendleton	WAH, PCR, SCR, DWS
Lakes/Reservoirs			
Cave Run	Entire Reservoir	Rowan/Bath	WAH, PCR, SCR
	KENTUCKY RIVER BASIN		
Bailey Run	Basin	Anderson	WAH, PCR, SCR
Buck Lick Branch	Basin	Lee	WAH, PCR, SCR
Cedar Brook	Basin	Anderson	WAH, PCR, SCR
Chimney Top Creek	Basin	Wolfe	CAH, PCR, SCR
Clarks Run	Source to Herrington Lake	Boyle	WAH, PCR, SCR
Dix River	Herrington Lake Dam to Kentucky River	Garrard/Mercer	CAH, PCR, SCR
Dix River	Source to River Mile 33.1 (Headwaters of Herrington Lake)	Boyle/Garrard	WAH, PCR, SCR

East Fork Indian Creek	Source to Indian Creek	Menifee	CAH, PCR, SCR
Gladie Creek	Basin	Menifee	CAH, PCR, SCR
Hanging Fork Creek	Source to Dix River	Boyle/Lincoln	WAH, PCR, SCR
Kentucky River	River Mile 254.8 to Ohio River	Carroll	WAH, PCR, SCR, DWS
Middle Fork Kentucky River	Source to River Mile 76.6 (Headwaters of Buckhorn Lake)	Leslie	WAH, PCR, SCR
Middle Fork Kentucky River	River Mile 43.2 (Buckhorn Lake Dam) to North Fork Kentucky River	Lee	WAH, PCR, SCR
Middle Fork Red River	Source to River Mile 10.6	Powell	CAH, PCR, SCR
North Fork Kentucky River	Source to Kentucky River	Lee	WAH, PCR, SCR, DWS
Parched Corn Creek	Source to Red River	Wolfe	CAH, PCR, SCR
Red River	Source to River Mile 68.6	Menifee/Wolfe	WAH, PCR, SCR
Red River	River Mile 68.6 to River Mile 59.5	Menifee/Wolfe	WAH, PCR, SCR, ORW
Red River	River Mile 59.5 to Kentucky River	Clark/Estill	WAH, PCR, SCR, DWS
Ross Creek	Source to Kentucky River	Lee	WAH, PCR, SCR
Silver Creek	Source to Kentucky River	Madison	WAH, PCR, SCR
South Fork Elkhorn Creek	Source to North Fork Elkhorn Creek	Franklin	WAH, PCR, SCR
South Fork Kentucky River	Source to Kentucky River	Lee	WAH, PCR, SCR, DWS
Swift Camp Creek	Source to Red River	Wolfe	CAH, PCR, SCR
Town Branch	Source to South Fork Elkhorn Creek	Fayette	WAH, PCR, SCR
Lakes/Reservoirs			
Bert Combs	Entire Reservoir	Clay	WAH, CAH, PCR, SCR, DWS
Buckhorn	Entire Reservoir	Perry	WAH, PCR, SCR, DWS
Carr Fork	Entire Reservoir	Knott/Perry	WAH, PCR, SCR
Fishpond	Entire Reservoir	Letcher	WAH, CAH, PCR, SCR
Herrington	Entire Reservoir	Garrard/Mercer	WAH, PCR, SCR, DWS
Mill Creek	Entire Reservoir	Wolfe	WAH, CAH, PCR, SCR, DWS
	SALT RIVER BASIN		
Chenoweth Run	Source to Floyds Fork (River Mile 24.3)	Jefferson	WAH, PCR, SCR
Currys Fork	Confluence of South and North Forks to Floyds Fork	Oldham	WAH, PCR, SCR
Floyds Fork	Source to Salt River	Bullitt	WAH, PCR, SCR
Mill Creek	Source to Salt River	Bullitt	WAH, PCR, SCR
North Fork of Currys Fork	Source to South Fork of Currys Fork	Oldham	WAH, PCR, SCR

Salt River	Source to River Mile 74.8 (Headwaters of Taylorsville Lake)	Anderson	WAH, PCR, SCR, DWS
Salt River	River Mile 60.1 (Taylorsville Lake Dam) to Ohio River)	Hardin/ Jefferson	WAH, PCR, SCR, DWS
Beech Fork Salt River	Source to Salt River	Hardin/Bullitt	WAH, PCR, SCR
Rolling Fork Salt River	Source to Salt River	Bullitt	WAH, PCR, SCR, DWS
Unnamed tributary to Mill Creek	Source to Mill Creek at River Mile 11.8	Bullitt	WAH, PCR, SCR
Lakes/Reservoirs			
Taylorsville	Entire Reservoir	Spencer	WAH, PCR, SCR
	GREEN RIVER BASIN		
Barren River	Source to River Mile 118.5 (Headwaters of Barren River Lake)	Allen	WAH, PCR, SCR
Barren River	River Mile 79.1 (Barren River Lake Dam) to River Mile 15.0	Warren	WAH, PCR, SCR, DWS
Barren River	River Mile 15.0 to Green River	Butler/Warren	WAH, PCR, SCR, ORW
Beaver Dam Creek	Source to Green River	Edmonson	CAH, PCR, SCR
Big Pitman Creek	Source to Green River	Green	WAH, PCR, SCR
Black Lick Creek	Source to Clear Fork	Logan	WAH, PCR, SCR, DWS
Buck Horn Creek	Source to Little Pitman Creek	Taylor	WAH, PCR, SCR
Buffalo Creek	Source to Green River (in Mammoth Cave National Park	Edmonson	CAH, PCR, SCR
Cypress Creek	Source to Pond River	McLean	WAH, PCR, SCR
Drakes Creek	Confluence of West Fork and Middle Fork to Barren River	Warren	WAH, PCR, SCR
Gasper River	Source to Barren River	Warren	WAH, PCR, SCR
Green River	Source to River Mile 340.1 (Headwaters of Green River Lake)	Adair	WAH, PCR, SCR, DWS
Green River	River Mile 305.6 (Green River Lake Dam) to River Mile 225.9	Hart	WAH, PCR, SCR, DWS
Green River	River Mile 225.9 to River Mile 181.7	Edmonson[/Hart]	WAH, PCR, SCR, ORW
Green River	River Mile 181.7 to River Mile 168.0	Butler/Warren [Edmonson/Warren]	WAH, PCR, SCR, DWS
Green River	River Mile 168.0 to River 148.0	Butler[/Warren]	WAH, PCR, SCR, ORW
Green River	River Mile 148.0 to Ohio River	Henderson	WAH, PCR, SCR, DWS

Lick [Fork] Creek	Source to W. Fork Drakes Creek	Simpson	CAH, PCR, SCR
Little Pitman Creek	Source to Big Pitman Creek	Green	WAH, PCR, SCR
Lynn Camp Creek	Source to Green River	Hart	CAH, PCR, SCR
Middle Pitman Creek	Source to Big Pitman Creek	Green	WAH, PCR, SCR
Underground River System	Mammoth Cave National Park	Edmonson/Hart/ Barren	CAH, PCR, SCR, ORW
	Turnhole Spring Basin	Edmonson/Barren	CAH, PCR, SCR, ORW
	Echo River Basin	Edmonson	CAH, PCR, SCR, ORW
	Pike Spring Basin	Edmonson	CAH, PCR, SCR, ORW
	Mile 205.7 Spring Basin	Hart	CAH, PCR, SCR, ORW
	McCoy Spring Basin	Hart	CAH, PCR, SCR, ORW
	Suds Spring Basin	Hart/Barren	CAH, PCR, SCR, ORW
Mud River	Source to Green River	Butler/Muhlen- burg	WAH, PCR, SCR
Nolin River	Source to River Mile 64.3 (Headwaters of Nolin Lake)	Hart/Grayson	WAH, PCR, SCR
Nolin River	River Mile 7.6 (Nolin Lake Dam) to Green River	Edmonson	CAH, PCR, SCR
Rough River	Source to River Mile 133.8 (Headwaters of Rough River Lake)	Hardin	WAH, PCR, SCR, DWS
Rough River	River Mile 89.3 (Rough River Lake Dam) to River Mile 72.4	Ohio/Grayson	CAH, PCR, SCR, DWS
Rough River	River Mile 72.4 to Green River	McLean/Ohio	WAH, PCR, SCR, DWS
Roundstone Creek	Source to Hwy 1140 (River Mile 3.5)	Hart	CAH, PCR, SCR
Sharp's Branch	Source to West Fork Drakes Creek	Simpson	WAH, PCR, SCR
Trammel Fork	Source to Hwy 31E (River Mile 23.6)	Warren	CAH, PCR, SCR
Trammel Fork	River Mile 23.6 to Drakes Creek	Warren	WAH, PCR, SCR
West Fork Drakes Creek	Source to Confluence with Middle Fork Drakes Creek	Warren	WAH, PCR, SCR, DWS
Wiggington Creek	Source to Gasper River	Logan	WAH, PCR, SCR
Lakes/Reservoirs			
Barren River	Entire Reservoir	Barren/Allen	WAH, PCR, SCR, DWS
Green River	Entire Reservoir	Taylor	WAH, PCR, SCR, DWS
Nolin	Entire Reservoir	Edmonson	WAH, PCR, SCR, DWS
Rough River	Entire Reservoir	Breckinridge/ Grayson	WAH, PCR, SCR, DWS

	LOWER CUMBERLAND RIVER BASIN			
Casey Creek	Source to Little River	Trigg	CAH, PCR, SCR	
Skinframe Creek	Source to Livingston Creek	Lyon	CAH, PCR, SCR	
Sulphur Spring Creek	Source to Red River	Simpson	CAH, PCR, SCR	
Cumberland River	River Mile 30.8 (Lake Barkley Dam) to Ohio River	Livingston	WAH, PCR, SCR, DWS	
Lakes/Reservoirs				
Barkley	Entire Reservoir to Kentucky/Tennessee State Line (River Mile 74.7)	Lyon/ Livingston	WAH, PCR, SCR, DWS	
	TENNESSEE RIVER BASIN			
Tennessee River	River Mile 12.0 [14.5] [22.4] to River Mile 0.0	Livingston/ McCracken	WAH, PCR, SCR, DWS	
Tennessee River	River Mile 22.4 (Kentucky Lake Dam) to River Mile 12.0 [14.5]	Livingston/ McCracken	WAH, PCR, SCR, ORW	
Lakes/Reservoirs				
Kentucky	Entire Reservoir to Kentucky/Tennessee State Line (River Mile 62.4)	Livingston/ Marshall	WAH, PCR, SCR, DWS	
	TRADEWATER RIVER BASIN			
Crab Orchard Creek/ Vaughn Ditch	Source to Tradewater River	Webster	WAH, PCR, SCR	
Montgomery Creek	Source to Tradewater River	Caldwell	WAH, PCR, SCR	
Tradewater River	Source to Ohio River	Crittenden/ Union	WAH, PCR, SCR	
	OHIO RIVER BASIN (Main Stem and Minor Tributaries)			
Doe Run Creek	Source to KY Hwy 1628 (River Mile 5.15)	Meade	CAH, PCR, SCR	
Ohio River	Big Sandy River (River Mile 317.1 [664.15)] to River Mile 940.7 [Mississippi River]	McCracken [Ballard]	WAH, PCR, SCR, DWS	
Ohio River	River Mile 940.7 to River Mile 943.3	McCracken	WAH, PCR, SCR, DWS, ORW	
Ohio River	River Mile 943.3 to River Mile 966.3	McCracken/ Ballard	WAH, PCR, SCR, DWS	
Ohio River	River Mile 966.3 to River Mile 969.5	Ballard	WAH, PCR, SCR, DWS, ORW	
Ohio River	River Mile 969.5 to Mississippi River	Ballard	WAH, PCR, SCR, DWS	
Ohio River	River Mile 922.0 to River mile 923.5 (Channel East of Towhead Island)	Livingston	WAH, PCR, SCR, ORW	
Paddy's Run	Source to Ohio River	Jefferson	PCR, SCR	Section 2(1)(d) and 2(2) of 401 KAR 5:031 do not apply.

Sinking Creek	Source to Kwy 259 (River Mile 4.0	Breckinridge	CAH, PCR, SCR
Lakes/Reservoirs			
Metropolis	Entire Lake	McCracken	WAH, PCR, SCR, ORW
Swan	Entire Lake	Ballard	WAH, PCR, SCR, ORW
	MISSISSIPPI RIVER BASIN (Mainstem and Minor Tributaries)		
Mississippi River	Confluence with Ohio River to Kentucky/Tennessee State Lines	Fulton	WAH, PCR, SCR
Murphy's Pond	Entire Pond	Hickman	WAH, PCR, SCR, ORW
	UPPER CUMBERLAND RIVER BASIN		
Archers Creek	Basin	Whitley	WAH, PCR, SCR, ORW
Bad Branch	Basin	Letcher	CAH, PCR, SCR, ORW
Bark Camp Creek	Basin	Whitley	CAH, PCR, SCR
Beaver Creek	Basin	McCreary	CAH, PCR, SCR, ORW
Beaver Creek	Source to Lake Cumberland	Wayne	WAH, PCR, SCR
Beck's Creek	Basin	Whitley	WAH, PCR, SCR, ORW
Big Lick Branch	Basin	Pulaski	WAH, PCR, SCR, ORW
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
Long Branch	Basin	Bell	WAH, PCR, SCR, ORW
Looney Creek	Basin above River Mile 5.3	Harlan	CAH, PCR, SCR
Martin's Fork	Basin above [Hwy 987] River Mile 27.4	Harlan	CAH, PCR, SCR, ORW
Middle Fork, Rock-castle River	River Mile 61.1 to River Mile 53.3 [41.3]	Jackson	WAH, PCR, SCR, ORW
Mill Creek	Basin	Bell	WAH, PCR, SCR, ORW
Mill Creek	Basin	McCreary	WAH, PCR, SCR, ORW
Poor Fork Cumberland River	Basin above River Mile 742.7	Letcher	CAH, PCR, SCR, ORW
Poor Fork Cumberland River	Basin from River Mile 742.7 to [above] Jefferson National Forest Boundary (River Mile 720.55)	Letcher	CAH, PCR, SCR
Poor Fork Cumberland	River Mile 720.55 to Clover Fork Cumberland River	Harlan	WAH, PCR, SCR, DWS
Razor Fork	Basin	Harlan	CAH, PCR, SCR
Rock Creek	Tennessee/Kentucky State Line (River Mile 21.9) to White Oak Creek	McCreary	CAH, PCR, SCR, ORW
Rock Creek	Basin from confluence with Jellico Creek	McCreary	WAH, PCR, SCR, ORW
Rockcastle River	River Mile 53.3 [27.9] to River Mile 8.5	Laurel/ Pulaski	WAH, PCR, SCR, ORW
Ross Branch	Basin	Whitley	WAH, PCR, SCR, ORW
Roundstone Creek	Source to River Mile 14.0 [Rockcastle River]	Rockcastle	WAH, PCR, SCR[, DWS]

Roundstone Creek	River Mile 14.0 to River Mile 4.7	Rockcastle	WAH, PCR, SCR, ORW
Roundstone Creek	River Mile 4.7 to Rockcastle River	Rockcastle	WAH, PCR, SCR, DWS
Sanders Creek	Basin	Whitley	WAH, PCR, SCR, ORW
Shillalah Creek	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR
Shut-in Branch	Basin	McCreary	WAH, PCR, SCR, ORW
Sims Fork	Basin	Bell	WAH, PCR, SCR, ORW
Straight Creek	Basin above River Mile 11.3	Harlan	WAH, PCR, SCR, ORW
Sugar Run	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR
Trammell Fork	Basin	McCreary	WAH, PCR, SCR, ORW
Troublesome Creek	Basin	McCreary	CAH, PCR, SCR
White Oak Creek	Basin above River Mile 1.2 (includes Little White Oak Creek)	Laurel	CAH, PCR, SCR
Wood Creek	Wood Creek Lake Dam (River Mile 4.0) to Hazel Patch Creek	Laurel	CAH, PCR, SCR
Yellow Creek	Source to Cumberland River	Bell	WAH, PCR, SCR
Youngs Creek	Basin	Whitley	WAH, PCR, SCR, ORW
Lakes/Reservoirs			
Beulah (=Tyner)	Entire Reservoir	Jackson	WAH, CAH, PCR, SCR, DWS
Cannon Creek	Entire Reservoir	Bell	WAH, CAH, PCR, SCR, DWS
Cumberland	Entire Reservoir	Pulaski	WAH, PCR, SCR, DWS
Dale Hollow	Entire portion of Reservoir within Kentucky	Clinton/ Cumberland	WAH, PCR, SCR
Laurel River	Entire Reservoir	Laurel/Whitley	WAH, CAH, PCR, SCR, DWS
Martins Fork	Entire Reservoir	Harlan	WAH, PCR, SCR
Wood Creek	Entire Reservoir	Laurel	WAH, CAH, PCR, SCR, DWS

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: December 13, 1989
FILED WITH LRC: December 13, 1989 at 11 a.m.

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

401 KAR 5:029. General provisions.

RELATES TO: KRS Chapter 224, 40 CFR Part 136
STATUTORY AUTHORITY: KRS 224.020, 224.033, 224.037, 224.060, 33 U.S.C. 1313
NECESSITY AND FUNCTION: This regulation contains a definition and abbreviation section applicable to 401 KAR 5:026, this regulation, and 401 KAR 5:031. [all water quality regulations.] A nondegradation section and [is included pursuant to KRS Chapter 224.] a section pertaining to withdrawal of waters not meeting water quality standards are included. [and criteria is included to address withdrawal of contaminated waters.] A sample collection and analytical methodology section is included to ensure reproducible analytical results. A provision relating to allowable conditions in mixing zones is also included.

Section 1. Definitions and Abbreviations. (1) [General function of definitions.] The following definitions describe terms used in 401 KAR 5:026, this regulation, and 401 KAR 5:031 [this chapter]. Terms not defined below shall have the meanings given to them in KRS 224.005 [relevant statutes] or, if not so defined [in statutes], the meanings attributed by common use.

(a) "Acute-chronic ratio" means the ratio of the acute toxicity (expressed as an LC_{50} of an effluent or a toxic substance to its chronic toxicity (expressed as a NOEL). It is used as a factor to estimate chronic toxicity from acute toxicity data.

(b) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed for a brief period of time without causing unacceptable harmful effects.

(c) "Acute toxicity" means lethality or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests, due to a short-term exposure (ninety-six (96) hours or less) to a specific toxic substance or mixture of toxic substances.

(d) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect (LC_{50}) by the end of the acute exposure period.

[(a) "Aquifer" means any formation of soil, sand, rock, gravel, limestone, sandstone, or other material or any fracture, crevice, or void in any space formation from which underground water is or may be available.]

(e) "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed indefinitely without causing an unacceptable harmful effect.

(f) "Chronic toxicity" means lethality, reduced growth or reproduction or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures (relative to the life span of the organisms or a significant portion of their life span) to toxic substances or mixtures of toxic substances.

(g) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes no observed unacceptable harmful effect (NOEL) on the test organisms by the end of the chronic exposure period.

(h) [(b)] "Cold water aquatic habitat" means surface waters and associated substrate that will support indigenous aquatic life or [including] self-sustaining or reproducing trout populations on a year-round basis.

(i) [(c)] "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.

(j) [(d)] "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water expected to result in an aquatic ecosystem protective of [suitable for] designated uses of surface waters. [Such] Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health [al use].

(k) [(e)] "Division" means the Division of Water.

(l) "Domestic water supply (DWS)" means surface waters that with conventional treatment will be suitable for: human consumption through a public water system as defined in 401 KAR 6:015, Section 1; culinary purposes; or for use in any food or beverage processing industry; and, meets state and federal regulations under the Safe Drinking Water Act, 42 U.S.C. 300f-300j, as amended.

(m) [(f)] "Effluent ditch" means that portion of a treatment system which is a discrete, person-made conveyance, either totally owned, leased or under valid easement by the discharger, which transports a discharge to waters of the Commonwealth.

(n) [(g)] "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion (the region of the thermocline) of a thermally stratified lake or reservoir.

(o) [(h)] "Eutrophication" means the enrichment of surface waters of the state by the discharge or addition of nutrients.

(p) "Existing uses" means those legitimate uses being attained in or on a surface water of the Commonwealth on or after November 28, 1975, irrespective of its use classification.

(q) [(i)] "Fecal coliform" means the portion of the coliform group of bacteria which are present in the intestinal tract or the feces of warm-blooded animals. It generally includes organisms which are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus two-tenths (0.2) degrees C.

(r) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(s) [(j)] "Hypolimnion" means the lower cold region of a thermally stratified lake or reservoir [body of water] that extends from the metalimnion to the bottom [of the lake and circulation is restricted while stratified with the upper waters thereby receiving no oxygen from the atmosphere].

(t) [(k)] "Indigenous aquatic life" means naturally occurring aquatic organisms including but not limited to bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles and amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from any given surface

water.

(u) [(l)] "Intermittent water [stream]" means a stream that flows only at certain times of the year as when it receives water from springs or precipitation in its [the] immediate watershed.

(v) [(m)] "LC_{50}" means that concentration of a toxic substance or mixture of toxic substances which is lethal (or immobilizing, if appropriate) to fifty (50) percent of the species tested in a toxicity test during a specified exposure period. [is used to express the results of bioassays having lethality as the criterion of toxicity. A numerical percentage is used to indicate the percentage of the test animals killed at a given concentration.]

(w) "LC_1" means that concentration of a toxic substance or mixture of toxic substances which is lethal (or immobilizing, if appropriate) to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.

[(n) "Low flow (seven (7) day, once-in-ten (10) year low flow)" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years and is the governing flow criterion for water quality standards, except where stream flow is regulated, in which case the governing flow shall be the instantaneous minimum flow.]

(x) "Maintain" means to preserve or keep in present condition by not allowing adverse permanent or long-term changes to water quality or to populations of aquatic organisms or their habitat.

[(o) "Median tolerance limit (TLm)" is a measure of the concentration at which fifty (50) percent of the organisms survive.]

(y) [(p)] "Milligrams per liter (mg/l)" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water assuming unit density.

(z) [(q)] "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge of quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(aa) [(r)] "Natural temperature" means the temperature that would exist in waters of the Commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by [opposed to] climatic change or naturally occurring [seasonally] variable temperature associated with riparian vegetation and seasonal changes.

(bb) [(s)] "Natural water quality" means those naturally occurring physical, chemical, and biological properties of waters.

(cc) [(t)] "Net discharge" means the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(dd) "No observed effect level (NOEL)" means the highest concentration of an effluent or a toxic substance that causes no observed harmful effects on either indigenous aquatic organisms or representative indicator organisms used in toxicity tests. [a test species.]

(ee) [(u)] "Nonpoint" means any source of pollutants not defined by point source as used in this regulation.

(ff) [(v)] "Outstanding resource waters" means surface waters designated by the cabinet pursuant to 401 KAR 5:031, Section 7.

(gg) [(w)] "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(hh) [(x)] "Productive aquatic communities" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(ii) [(y)] "Propagation" means the continuance of species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of species by artificial culture and stocking.

[(z) "Public water supply" means only surface water that with conventional treatment will be suitable for: human consumption through a public water system as defined in 401 KAR 6:015, Section 1; culinary purposes; or for use in any food or beverage processing industry and meets state and/or federal regulations under the Safe Drinking Water Act (P.L. 92-523). This term is synonymous with "domestic water supply."]

(jj) [(aa)] "Standard or water quality standard" means [is] a regulation promulgated by the cabinet establishing the use [or uses] to be made of a surface water [water-body or segment] and the water quality criteria necessary to maintain and protect that use [or uses].

(kk) [(bb)] "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable [clear] hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid [proper] easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(ll) [(cc)] "Thermocline" means the plane in a body of water in which the maximum rate of decrease in temperature occurs with respect to depth.

(mm) [(dd)] "Toxic substances" means substances which are bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic or carcinogenic and cause death, disease, behavioral abnormalities, physiological malfunctions or physical deformities in any organism or its offspring or interfere with normal propagation. [interfere with the normal propagation of aquatic life, wildlife, or preclude the legitimate uses of any waters of the Commonwealth.]

(nn) [(ee)] "Warm water aquatic habitat (WAH)" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(oo) "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(2) Abbreviations [used in water quality regulations]:

(a) °C means degree(s) Celsius;

(b) EPA - See U. S. EPA;
(c) °F means degree(s) Fahrenheit;
(d) KPDES means Kentucky Pollutant Discharge Elimination System;
(e) mg/l means milligrams per liter (same as ppm);
(f) NPDES means National Pollutant Discharge Elimination System;
(g) pCi/l means picocuries per liter;
(h) ppb means part(s) per billion;
(i) [(h)] ppm means part(s) per million (assuming unit density, same as mg/l);
(j) [(i)] ug/l means micrograms per liter (same as ppb assuming unit density);
(k) [(j)] U.S. EPA means the United States Environmental Protection Agency;
(l) $7Q_{10}$ means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years;
(m) POTW means public owned treatment works.

Section 2. Nondegradation. (1) It is the purpose of these regulations to safeguard the surface waters of the Commonwealth for their designated uses, to prevent the creation of any new pollution of these [the] waters [of the Commonwealth]; and to abate any existing pollution.

(2) Where the quality of surface [the] waters exceeds that [levels] necessary to support propagation of fish, shellfish, [and] wildlife and recreation in and on the water, that quality shall be maintained and protected unless the cabinet finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the cabinet's [state's] continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the cabinet shall assure water quality adequate to protect existing uses fully. Further, the cabinet will assure that there shall be achieved the highest statutory and regulatory requirements for waste treatment by all new and existing point sources and that nonpoint sources of pollutants be controlled by application of all cost effective and reasonable best management practices. [The state water quality standards and continuing planning process designed to provide for the protection of existing water quality and/or the upgrading or enhancement of water quality in all waters of the Commonwealth shall serve as the method for implementation of this policy.]

(3) The implementation of this section [policy] shall conform to 40 CFR 131.12 to the extent allowed by KRS 224.020.

(4) Water quality shall be maintained and protected in those waters designated as outstanding resource waters according to procedures specified in Section 7(2) of 401 KAR 5:031.

(5) In those cases where potential water quality impairment associated with a thermal discharge is involved, a successful demonstration conducted under Section 316 of the Clean Water Act, 33 U.S.C. 1326, shall [is considered to] be in compliance with all portions of this [nondegradation] section.

Section 3. Withdrawal of Contaminated Water. It is recognized that surface waters will, on occasion, not meet the standards and criteria established in 401 KAR 5:031 [these regulations]. Withdrawal and subsequent discharge of these waters without alteration of the physical, or chemical characteristics into the same or similar surface water [body] will not be considered a violation of water quality standards [these regulations]. The cabinet will determine effluent criteria and KPDES permit limitations in these situations based on the quality of the raw and receiving waters. The cabinet retains the right to require modification under the provisions of 401 KAR 5:035, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080 [Section 1, if water quality characteristics so dictate].

Section 4. Sample Collection and Analytical Methodology. All methods of [sample collection,] preservation and analysis used to determine conformity or nonconformity with water quality standards shall be governed by [in accordance with those prescribed in] 40 CFR Part 136, as amended, when applicable. Sample collection and other methods not found in the above reference may be used where appropriate if approved by the cabinet.

Section 5. Mixing Zones. The following guidelines and conditions are applicable to [in] all mixing zones:

(1) The cabinet will assign, [shall,] on a case-by-case basis, [specify] definable geometric limits for mixing zones for a discharge or a pollutant or pollutants within a discharge. Applicable limits shall include, but may not be limited to, the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones. Mixing zones will not be allowed until applicable limits are [, unless] assigned by the cabinet in accordance with this section.

(2) Concentrations of toxic substances which exceed the acute criteria for protection of aquatic life set forth in 401 KAR 5:031 shall not exist [ninety-six (96) hour LC50 or other appropriate LC50 tests for representative indigenous aquatic organisms are not allowed] at any point within an assigned [the] mixing zone or in the discharge itself unless a zone of initial dilution is assigned. A zone of initial dilution may be assigned on a case-by-case basis at the discretion of the cabinet. Concentrations of toxic substances shall not [which] exceed [one-third (1/3)] the acute criteria [ninety-six (96) hour LC50 or other appropriate LC50 tests for representative indigenous aquatic organisms are to be met] at the edge of the assigned zone of initial dilution. Chronic criteria for the protection of aquatic life and criteria for the protection of human health from the consumption of fish tissue shall [are to] be met at the edge of the assigned [allowable] mixing zone.

(3) The location of a mixing zone shall not interfere with fish spawning or [areas,] nursery areas, fish migration routes, public water supply intakes, or bathing areas, nor preclude the free passage of fish or other aquatic life.

(4) Whenever possible the mixing zone shall not exceed one-third (1/3) of the width of the receiving stream, and in no case shall exceed one-half (1/2) of the cross-sectional area.

(5) In lakes and other surface impoundments, the volume of a mixing zone shall not affect in excess of ten (10) percent of the volume of that

portion of the receiving waters available for mixing.

(6) [In all cases,] A mixing zone shall [must] be limited to an area or volume which will not adversely alter the legitimate uses of the receiving water, nor [shall a mixing zone] be so large as to adversely affect an established community of aquatic organisms.

(7) In the case of thermal discharges, a successful demonstration conducted under Section 316(a) of the Clean Water Act shall constitute compliance with all provisions of this section.

[(8) Criteria listed in Section 4 of 401 KAR 5:031 do not apply in the mixing zone.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: December 13, 1989
FILED WITH LRC: December 13, 1989 at 11 a.m.

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

401 KAR 5:031. Surface water standards.

RELATES TO: KRS Chapter 224
STATUTORY AUTHORITY: KRS 224.020, 224.033, 224.034, 224.037, 224.060, 33 U.S.C. 1313
NECESSITY AND FUNCTION: This regulation sets forth water quality standards which consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These standards are minimum criteria which apply to all surface waters in order to maintain and protect them for designated uses. Criteria for nutrients are recognized and included. These water quality standards are established to protect public health and welfare, protect and enhance the quality of water, and fulfill federal and state requirements for the establishment of water quality standards. These water quality standards are subject to periodic review and revision in accordance with federal and state laws. Definitions for terms used in this regulation are found in 401 KAR 5:029.

Section 1. Nutrient Limits. (1) In lakes, surface impoundments and their tributaries, and other surface waters where eutrophication problems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges will be limited as appropriate by the cabinet.

(2) The affected surface waters will be designated as nutrient limited.

Section 2. Minimum Criteria Applicable to All Surface Waters. (1) The following minimum water quality criteria are applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of [specified in] 401 KAR 5:029, Section 5[(2)]. Surface waters shall not be aesthetically or otherwise degraded by substances that:

(a) [(1)] Settle to form objectionable deposits;

(b) [(2)] Float as debris, scum, oil, or other matter to form a nuisance;

(c) [(3)] Produce objectionable color, odor, taste, or turbidity;

(d) [(4)] Injure, are chronically or acutely [be] toxic to or produce adverse physiological or behavioral responses in humans, animals, fish and other aquatic life;

(e) [(5)] Produce undesirable aquatic life or result in the dominance of nuisance species;

(f) Cause fish flesh tainting (the concentration of all phenolic compounds which cause fish flesh tainting shall not exceed five (5) ug/l as an instream value);

(g) [(6)] Cause the following changes in radionuclides:

1. [(a) Cause] The gross total alpha particle activity (including radium-226 but excluding radon [radium] and uranium) to exceed fifteen (15) pCi/l;

2. [(b) Cause] Combined radium-226 and radium-228 to exceed five (5) pCi/l (specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/l);

3. [(c) Cause] The concentration of total gross beta particle activity to exceed fifty (50) pCi/l;

4. [(d) Cause] The concentration of tritium to exceed 20,000 pCi/l;

5. [(e) Cause] The concentration of total Strontium-90 to exceed eight (8) pCi/l.

(2) The following criteria are applicable to all surface water outside designated mixing zones except for those points where water is withdrawn for domestic water supply use. They are established for the protection of human health from the consumption of fish tissue, and shall not be exceeded. For those substances associated with a cancer risk, an acceptable risk level of no more than one (1) additional cancer case in a population of 1,000,000 people (10^{-6}) will be utilized to establish the allowable concentration.

Table 1.
Water Quality Criteria for Protection of Human Health from the Consumption of Fish Tissue

Substances not Linked to Cancer	Concentration (ug/l)
Metals[1]	
Antimony	45,000
Chromium (III)	3,433,000
Mercury	0.146
Nickel	100
Thallium	48
Organics	
Acrolein	780
1,2,4,5-tetrachlorobenzene	48
Pentachlorobenzene	85
1,1,1-trichloroethane	1,030,000
bis(2-chloroisopropyl) ether	4,360
Dichlorobenzenes	2,600
Dichloropropenes	14,100
Endosulfan	159
Ethylbenzene	3,280
Fluoranthene	54
Isophorone	520,000
2,4-dinitro-o-cresol	765
Dinitrophenol	14,300
Dibutyl phthalate	154,000
Diethyl Phthalate	1,800,000

Di-2-ethylhexyl phthalate	50.000
Dimethyl phthalate	2,900,000
Toluene	424,000
Substances Linked to Cancer	
Metals[1]	
Beryllium	0.117
Organics	
Acrylonitrile	0.65
Aldrin	.000079
Benzene	40.0
Benzidine	.00053
Carbon tetrachloride	6.94
Chlordane	.00048
Hexachlorobenzene	.00074
1,2-dichloroethane	243
1,1,2-trichloroethane	41.8
1,1,2,2,-tetrachloroethane	10.7
Hexachloroethane	8.74
2,4,6-trichlorophenol	3.6
bis(2-chloroethyl) ether	1.36
Chloroform	15.7
DDT	0.000024
Dichlorobenzidine	0.02
1,1-dichloroethylene	1.85
Dieldrin	0.000076
2,4-dinitrotoluene	9.1
Dioxin (2,3,7,8-TCDD)	0.000000014
Diphenylhydrazine	0.56
Halomethanes	15.7
Heptachlor	0.00029
Hexachlorobutadiene	50.0
alpha Hexachlorocyclohexane (HCH)	0.031
beta HCH	0.0547
gamma HCH (lindane)	0.0625
Technical HCH	0.0414
N-nitrosodiethylamine	1.24
N-nitrosodimethylamine	16.0
N-nitrosodibutylamine	0.587
N-nitrosodiphenylamine	16.1
N-nitrosopyrrolidine	91.9
Polychlorinated Biphenyls (PCBs)	0.000079
Polynuclear Aromatic Hydrocarbons (PAHs)	0.0311
Tetrachloroethylene	8.85
Toxaphene	0.00073
Trichlorethylene	80.7
Vinyl Chloride	525

[1]Total recoverable form measured in an unfiltered sample

Section 3. Use Classifications and Associated Criteria. (1) Surface waters may be designated as having one (1) or more of the following legitimate uses and associated use criteria. The classifications in Sections 4, 5, 6, and 7 of this regulation include the most common usage of surface waters within the Commonwealth. Nothing in this regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Section 2 of this regulation and the following [indicated] use criteria represent minimum conditions necessary to protect [designated] surface waters for the indicated [that] use and to provide for the protection of human health from fish consumption or a combination of fish and water consumption.

(2) On occasion surface water quality may be outside of the limits established to protect designated uses because of natural conditions. When this condition occurs during periods when stream flows are below the [low] flow which is used by the cabinet to establish effluent limits for wastewater treatment facilities [consistent with the definition contained in 401 KAR 5:029, Section 1(1)(n)], a discharger shall not be considered a contributor to in-stream violations of water quality standards, provided that treatment in compliance with permit requirements is maintained.

(3) Governing flows for water quality-based permits. The following stream flows are to be utilized when deriving KPDES permit limitations for the protection of surface waters for the listed uses and purposes.

(a) Aquatic life protection - $7Q_{10}$.

(b) Water-based recreation protection - $7Q_{10}$.

(c) Domestic water supply protection - harmonic mean for cancer-linked substances, $7Q_{10}$ for noncancer-linked substances, determined at points of withdrawal.

(d) Human health protection from fish consumption only - harmonic mean for cancer-linked substances, $7Q_{10}$ for noncancer-linked substances.

(e) Protection of aesthetics and for changes in radionuclides - $7Q_{10}$.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply [are] for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreous growth, agricultural, and industrial uses:

(a) Natural alkalinity as $CaCO_3$ shall not be reduced by more than twenty-five (25) percent. Where natural alkalinity is below twenty (20) mg/l $CaCO_3$, no reduction below the natural level is allowed. Alkalinity shall not be reduced or increased to a degree which may adversely affect the aquatic community.

(b) pH shall not be less than six (6.0) nor more than nine (9.0) and shall not fluctuate more than one (1) unit over a period of twenty-four (24) hours.

(c) Flow shall not be altered to a degree which will adversely affect the aquatic community.

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet will determine allowable surface water temperatures on a site-specific basis utilizing available data which shall be based on the effects of temperature on the aquatic biota which utilize specific surface waters of the Commonwealth and which may be affected by person-induced temperature changes. Effects on downstream uses will also be considered in determining site-specific temperatures. As a guideline, the water temperature for all surface waters shall comply with the limits shown in the following table:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56

March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

3. A successful demonstration concerning thermal discharge limits carried out under Section 316(a) of the Clean Water Act shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in or on the water into which the discharge is made.

(e) Dissolved oxygen.

1. Dissolved oxygen shall be maintained at a minimum concentration of five (5) mg/l daily average; [and] at no time shall [should] the instantaneous minimum be less than four (4) mg/l.

2. The dissolved oxygen concentration shall be measured at middepth in waters having a total depth of ten (10) feet or less and at representative depths in other waters.

(f) Solids.

1. Total dissolved solids. Total dissolved solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

2. Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected. [The addition of settleable solids that may adversely alter the stream bottom is prohibited.]

3. Settleable solids. The addition of settleable solids that may adversely alter the stream bottom is prohibited.

(g) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/l at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/l, pH and temperature, by means of the following equation:

$$Y = 1.2 \text{ (Total ammonia-N)}/(1 + 10^{pK_a - pH})$$

$$pK_a = 0.0902 + (2730/273.2 + T_c)$$

Where:

T_c = temperature, degrees Celsius,

Y = un-ionized ammonia (mg/l). [as illustrated in the table entitled "Instream Ammonia-N Concentrations," filed herein by reference. Copies may be obtained from the Division of Water, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.]

[(h) Phenolic compounds. The concentration of phenolic compounds shall not exceed five (5) ug/l as an in-stream value.]

(h) [(i)] Toxics.

1. The allowable in-stream concentration of toxic substances or whole effluents containing toxic substances which are noncumulative or nonpersistent (half-life of less than ninety-six (96) hours) shall not exceed the no observed effect level (NOEL) or one-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC50) of a representative indigenous or indicator aquatic organism(s) or exceed a chronic toxicity unit of one (1), whichever is more appropriate.

2. The allowable in-stream concentration of toxic substances or whole effluents containing toxic substances which are bioaccumulative or persistent, including pesticides, when not specified elsewhere in this section, shall not exceed the NOEL or 0.01 of the ninety-six (96) hour median lethal concentration (LC50) of a representative indigenous or indicator aquatic organism(s) or exceed a chronic toxicity unit of one (1), whichever is more appropriate.

3. In the absence of acute criteria for substances listed in Table 2 or for other substances known to be toxic but not listed in this regulation, or for whole effluents which are acutely toxic, the allowable concentration shall not exceed the LC_1 or one-third (1/3) LC_{50} concentration derived from bioassay tests on a representative indigenous or indicator aquatic organism(s) or exceed an acute toxicity unit of one (1), whichever is more appropriate.

4. [3.] Where specific application factors have been determined for a toxic substance or whole effluent such as an acute/chronic ratio or water effect ratio, they may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon approval by the cabinet.

5. [4.] Allowable in-stream concentrations for specific substances (acute and chronic criteria) [parameters] are listed [outlined] in Table 2 [I]. These concentrations [values] are based on protecting aquatic life from acute and chronic toxicity, and shall not be exceeded.

Table 2 [I]
Warm water Aquatic Habitat Criteria[1]

Metals

Substance	Acute Criteria	Chronic Criteria
[Parameter		Concentration]
Arsenic		50 ug/l
Arsenic (III)	360 ug/l	190 ug/l
Beryllium		11 ug/l soft water[2] 1100 ug/l hard water[2]
Cadmium (ug/l)	e(1.128(ln Hard*)-3.828)	e(0.7852(ln Hard)-3.490) [4.0 ug/l soft water[2]] [12.0 ug/l hard water[2]]
[Chlordane		0.0043 ug/l]
[Chloride		600 mg/l]
[Chlorine, total residual]		10 ug/l
[Chromium		100 ug/l]
Chromium (III) (ug/l)	e(0.8190(ln Hard)+3.688)	e(0.8190(ln Hard)+1.561)
Chromium (VI)	16 ug/l	11 ug/l
Copper (ug/l)	e(.9422(ln Hard)-1.464)	e(.8545(ln Hard)-1.465)
[Cyanide, Free		5 ug/l]
[Hydrogen Sulfide (undissociated)]		2 ug/l

Iron	4.0 mg/l	1.0 mg/l[3]
Lead (ug/l)	e(1.273(ln Hard)-1.460	e(1.273(ln Hard)-4.705)
Mercury	2.4 ug/l	0.012 ug/l
Nickel (ug/l)	e(0.8460(ln Hard)+3.3612)	e(0.8460(ln Hard)+1.1645)
[Phthalate Esters		3 ug/l]
[Polychlorinated Biphenyls]		0.0014 ug/l
Selenium	20 ug/l	5 ug/l
Silver (ug/l)	e(1.72(ln Hard)-6.52	
Zinc (ug/l	e(0.8473(ln Hard)+0.8604	e(0.8473(ln Hard)+0.7614 [47 ug/l]

Organics

Aldrin	3.0 ug/l	
Chlordane	2.4 ug/l	0.0043 ug/l
Chloropyrifos	0.083 ug/l	0.041 ug/l
DDT	1.1 ug/l	0.001 ug/l
Dieldrin	2.5 ug/l	0.0019 ug/l
Endosulfan	0.22 ug/l	0.056 ug/l
Endrin	0.18 ug/l	0.0023 ug/l
Heptachlor	0.52 ug/l	0.0038 ug/l
Lindane	2.0 ug/l	0.080 ug/l
Parathion	0.065 ug/l	0.013 ug/l
Pentachloro-phenol (ug/l)	e(1.005(pH) -4.830)	e(1.005(pH)-5.290)
Phthalate esters		3 ug/l
Polychlorinated Biphenyls (PCBs)		0.0014 ug/l
Toxaphene	0.73 ug/l	0.0002 ug/l

Others

Chloride	1200 mg/l	600 mg/l
Chlorine, total residual	19 ug/l	10 ug/l
Cyanide, free	22 ug/l	5 ug/l
Hydrogen sulfide (undissociated)		2 ug/l

[1]Metal criteria, for purposes of this regulation, are total recoverable metals to be measured in an unfiltered sample.

[2]Soft water has an equivalent concentration of calcium carbonate ($CaCO_3$) of zero to seventy-five (75) mg/l, and hard water has an equivalent concentration of calcium carbonate ($CaCO_3$) of over seventy-five (75) mg/l.

[3]The chronic criterion for [daily average] total recoverable iron [concentration] shall not exceed three and five-tenths (3.5) mg/l when it is established that there will be no damage to aquatic life.

*Hard = Hardness as mg/l $CaCO_3$.

(2) Cold water aquatic habitat. The following parameters and their associated criteria are for the protection of productive cold water aquatic communities and streams which support trout populations (whether self-sustaining or reproducing) on a year-round basis. All of the criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six (6) mg/l as a daily average and five (5) mg/l as an instantaneous minimum shall be maintained at all times.

2. In impoundments which support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality.

(b) Temperature. Water temperature shall not be increased through man's activities above the natural seasonal temperatures.

[(c) Total residual chlorine. The total residual chlorine shall not exceed two (2) ug/l as an in-stream value.]

Section 5. Domestic Water Supply Use. Maximum allowable in-stream concentrations for specific substances [parameters], to be applicable at the point of withdrawal for use for domestic water supply from surface water sources are specified in Table 3 and shall not be exceeded. [II:]

Table 3 [II]
Domestic Water Supply Source Criteria[1]

Substances Not Linked to Cancer [Parameter]	Concentration
Metals	
Antimony	0.146 mg/l
Barium	1 mg/l
Cadmium	0.010 mg/l
[Chloride	250 mg/l]
Chromium	0.05 mg/l
Chromium (III)	170 mg/l
[Color	75 Platinum-Cobalt Color Units]
Copper	1 mg/l
[Fecal Coliform	2000/100 ml (Geometric mean)]
[Fluoride	1 mg/l]
Lead	0.05 mg/l
Manganese	0.05 mg/l
Mercury	0.144 ug/l
[Methylene Blue Active Substances	0.5 mg/l]
[Nitrate (NO_3-N, as Total)	10 mg/l]
Nickel	13.4 ug/l
Selenium	0.01 mg/l
Silver	0.05 mg/l
Thallium	0.013 mg/l
[Sulfate	250 mg/l]
[Total Dissolved Solids	750 mg/l]
Organics	
Acrolein	0.320 mg/l
Monochlorobenzene	0.488 mg/l
1-2-4-5-tetrachlorobenzene	0.038 mg/l
Pentachlorobenzene	0.074 mg/l
1,1,1-trichloroethane	18.4 mg/l
2,4,5-trichlorophenol	2.6 mg/l
Bis(2-chloroisopropyl) ether	0.0347 mg/l
Dichlorobenzenes	0.400 mg/l
2,4-dichlorophenol	3.090 mg/l
Dichloropropenes	0.087 mg/l
Endosulfan	0.074 mg/l
Endrin	0.001 mg/l
Ethylbenzene	1.4 mg/l
Fluoranthene	0.042 mg/l
Hexachlorocyclopentadiene	0.206 mg/l
Isophorone	5.2 mg/l
Nitrobenzene	19.8 mg/l
2-4-dinitro-o-cresol	0.0134 mg/l
Dinitrophenol	0.070 mg/l

Pentachlorophenol	1.0 mg/l
Phenol	3.5 mg/l
Dibutyl phthalate	34 mg/l
Diethyl phthalate	350 mg/l
Di-2-ethylhexyl phthalate	15 mg/l
Dimethyl phthalate	313 mg/l
Toluene	14.3 mg/l
Others	
Chloride	250 mg/l
Color	75 Platinum Cobalt Color Units
Cyanide (free)	0.200 mg/l
Fecal Coliform	2000/100 ml Geometric mean)
Fluoride	1.0 mg/l
Methylene Blue Active Substances	0.5 mg/l
Nitrate (NO_3-N)	10 mg/l
Sulfate	250 mg/l
Total Dissolved Solids	750 mg/l
Substances Linked to Cancer	
Metals (ug/l)	
Beryllium	0.0068
Organics (ug/l)	
Acrylonitrile	0.058
Aldrin	0.000074
Asbestos (fibers/liter)	30,000
Benzene	0.66
Benzidine	0.00012
Carbon tetrachloride	0.40
Chlordane	0.00046
Hexachlorobenzene	0.00072
1,2-dichloroethane	0.94
1,1,2-trichloroethane	0.60
1,1,2,2,-tetrachloroethane	0.17
Hexachloroethane	1.9
2,4,6-trichlorophenol	1.2
bis(2-chloroethyl) ether	0.03
Chloroform	0.19
DDT	0.000024
Dichlorobenzidine	0.01
1,1-dichloroethylene	0.033
Dieldrin	0.000071
2,4-dinitrotoluene	0.11
Dioxin (2,3,7,8-TCDD)	0.000000013
Diphenylhydrazine	0.042
Halomethanes	0.19
Heptachlor	0.00028
Hexachlorobutadiene	0.45
alpha Hexachlorocyclohexane (HCH)	0.009
beta HCH	0.016
gamma HCH (Lindane)	0.019
Technical HCH	0.012
N-nitrosodiethylamine	0.0008
N-nitrosodimethylamine	0.0014
N-nitrosodibutylamine	0.0064
N-nitrosodiphenylamine	4.9
N-nitrosopyrrolidine	0.016
Polychlorinated Biphenyls (PCBs)	0.000079
Polynuclear Aromatic Hydrocarbons (PAHs)	0.0028
Tetrachloroethylene	0.8
Toxaphene	0.00071
Trichloroethylene	2.7
Vinyl Chloride	2.0

[1]See note 1 in Table 2. [II]

Section 6. Recreational Waters. (1) Primary contact recreation water. Primary contact recreation waters are waters suitable for full body contact recreation during the recreation season of May 1 through October 31. Criteria for primary contact recreation waters are listed below:

(a) Fecal coliform content shall not exceed 200 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 400 colonies per 100 ml in [more than] twenty (20) percent or more of all samples taken during the month; these limits are applicable during the recreation season. Fecal coliform criteria listed in subsection (2)(a) of this section apply during the remainder of the year.

(b) pH shall be between six (6.0) to nine (9.0) and shall not change more than one (1) pH unit within this range over a period of twenty-four (24) hours.

(2) Secondary contact recreation water. Secondary contact recreation waters are waters suitable for partial body contact recreation, with minimal threat to public health due to water quality. The following criteria apply to waters classified for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1000 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 2000 colonies per 100 ml in [more than] twenty (20) percent or more of all samples taken during the month.

(b) pH shall be between six (6.0) to nine (9.0) and shall not change more than one (1) pH unit within this range over a period of twenty-four (24) hours.

Section 7. Outstanding Resource Waters. This classification category includes certain unique waters of the Commonwealth.

(1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated under the Kentucky Wild Rivers Act, KRS 146.200-146.360.

2. Waters designated under the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271 et seq. and high quality waters constituting an outstanding national resource water.

3. Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas and concurred upon by the cabinet.

4. Waters that support federally recognized endangered or threatened species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.

(b) Permissible consideration. Other surface waters may be included in this category as determined by the cabinet if [providing]:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological or historical area recognized by state or federal designation; or

2. They are a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics; or

two (2) of the following criteria:

a. Support a diverse or unique native aquatic flora or fauna.

b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat.

c. Provides a unique aquatic environment within a physiographic region.

(2) Outstanding resource waters protection [designation]: The classification of certain waters as outstanding resource waters shall fairly and fully reflect those aspects of the waters for which the classification is proposed. The cabinet will [shall] determine water quality criteria for these waters as follows:

(a) At a minimum, the criteria of Section 2 of this regulation and the appropriate criteria associated with the stream use classification assignments in 401 KAR 5:026, [Section 7,] are applicable to these waters.

(b) Where the values identified for an outstanding resource water are dependent upon or related to in-stream water quality, the cabinet will [shall] review existing water quality criteria and determine whether additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination. Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding resource waters which support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated to the satisfaction of the cabinet, that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species which the water supports.

(c) "Water quality shall be maintained and protected in waters which constitute an outstanding national resource. The cabinet may approve temporary or short-term changes in water quality if the changes to the waters in question have no demonstrable impact on the ability of the waters to support this use."

(d) Adoption of more protective criteria in accordance with this section will [shall] be listed with the respective stream segment in 401 KAR 5:026, [Section 7,] and will be promulgated as an [subject to promulgation under Kentucky's] administrative regulation pursuant to KRS Chapter 13A [rule-making procedures].

(3) Determination of classification.

(a) Any person may present a proposal to classify certain waters under this section. Documentation requirements in support of an outstanding resource water proposal shall contain those elements outlined in 401 KAR 5:026, Section 5(1) through (8).

(b) The cabinet will [shall] review the proposal and supporting documentation to determine whether the proposed waters qualify as outstanding resource waters within the criteria established by this regulation. The cabinet will [shall] document the determination to deny or to propose reclassification, and a copy of the [such] decision will [shall] be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a reclassification, if appropriate, will [shall] be made pursuant to 401 KAR 5:026[, Section 6].

Section 8. Water Quality Criteria for the Main Stem of the Ohio River. The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 [664.15] to its confluence with the Mississippi River, and shall not be exceeded: these waters are subject to all applicable provisions of 401 KAR 5:026, 401 KAR 5:029, and this regulation.

(1) Dissolved oxygen. Concentrations shall average at least five (5.0) mg/l per calendar day and shall not be less than four (4.0) mg/l at any time provided that a minimum of five and one-tenth (5.1) mg/l at any time is maintained during the April 15 - June 15 spawning season.

(2) Temperature.

(a) Allowable stream temperatures are:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

(b) A successful demonstration conducted for thermal discharge limits under Section 316(a) of the Clean Water Act will constitute compliance with these temperature criteria.

(3) Total dissolved solids: not to exceed 500 mg/l as a monthly average, nor exceed 750 mg/l at any time. Equivalent twenty-five (25) degrees Centigrade specific conductants values are 800 and 1200 micromhos/cm respectively.

(4) Maximum allowable in-stream concentrations for specific parameters are given below. Metal concentrations are total recoverable values except hexavalent chromium which is dissolved [unless otherwise listed].

Parameter	Concentration (mg/l)
Arsenic	.05
Barium	1.0
Chloride	250
Fluoride	1.0
Nitrite + Nitrate Nitrogen	10.0
Nitrite-Nitrogen	1.0
Phenolics	.005
Sulfate	250
[Chromium (hexavalent)	0.05
Cyanide (total)	0.025
Lead (dissolved)	0.05
Nitrite-Nitrate-N	10.00
Nitrite-N	1.0
Phenolic compounds	0.01]

[Copper: When total hardness as calcium carbonate is: | Allowable concentration is:

50	0.012
80	0.018
100	0.022
160	0.034
200	0.043]

[Zinc: When total hardness as calcium carbonate is: | Allowable concentration is:

0-80	0.040
81-120	0.055
121-160	0.070
161-180	0.095
181-200	0.115]

Parameter	Chronic Criteria Concentration ug/l	Acute Criteria Concentration ug/l
Cadmium	e(.7852(ln Hard)-3.490)	e(1.128(ln Hard)-3.828)
Chromium (hexavalent)	11	16
Copper	e(.8545(ln Hard)-1.465)	e(.9422(ln Hard)-1.464)
Cyanide (free)	5	22
Lead	e(1.273(ln Hard)-4.705)	e(1.273(ln Hard)-1.460)
Mercury	.012	2.4
Zinc	e(.8473(ln Hard)+.7614)	e(8473(ln Hard)+.8604)

(5) The net discharge of aldrin, dieldrin, DDT, including DDD and DDE, endrin, toxaphene, benzidine, and PCBs is prohibited.

Section 9. Exceptions to Criteria. (1) The cabinet may grant exceptions to the [classification] criteria contained in Sections 2, 4, 5, 6 and 7 of this regulation upon demonstration by an applicant that maintenance of applicable water quality criteria are not attainable or scientifically valid but the use classification is still appropriate. This determination will [must] be made on a case-by-case basis with respect to a specific surface water [stream segment] following an analysis for each area.

(2) The analysis shall [must] show that the water quality criteria cannot be reasonably achieved either on a seasonal or year-round basis due to natural conditions, or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 5, 6, [and] 7, and 8 of this regulation, or a [the] demonstration that meeting the criteria would cause substantial and widespread economic and social impact. Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that are consistent with those outlined in "Water Quality Standards Handbook" (EPA, 1983). In addition, an applicant shall [must] supply the documentation listed in Section 5 of 401 KAR 5:026.

(3) An exception to criteria listed in Section 2(2) of this regulation for the protection of human health from the consumption of fish tissue may be granted if it can be demonstrated that natural, ephemeral, intermittent or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) [(3)] Before [In] granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters are attained and maintained.

(5) [(4)] All exceptions to water quality criteria will be subject to review at least every three (3) years.

(6) [(5)] Upon completing a review and the procedures for promulgation under administrative rule-making, all exceptions to water quality criteria shall be listed with the respective stream segment in Section 7 of 401 KAR 5:026.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: December 13, 1989
FILED WITH LRC: December 13, 1989 at 11 a.m.

TRANSPORTATION CABINET
Department of Highways
Division of Planning
(Amended After Hearing)

603 KAR 5:070. Truck dimension limits.

RELATES TO: KRS 189.222
STATUTORY AUTHORITY: KRS 189.222(1)
NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for trucks using the State Primary Road System. This regulation is adopted to fix the maximum dimensions for all classes of highways.

Section 1. Except as provided in Section 2 of this regulation, the maximum dimensions for trucks using all class highways shall be as follows:

(1) Height: including body and load, not to exceed thirteen (13) feet and six (6) inches.

(2) Width: including body and load, not to exceed eight (8) feet.

(3) Length.

(a) Motor truck (single unit), including any part of the body or load, not to exceed forty-five (45) feet.

(b) Truck tractors and semitrailers, including any part of the body or load, not to exceed fifty-five (55) feet, except for truck tractors and semitrailer units exclusively engaged in the transportation of motor vehicles the usual and ordinary bumper overhang of the transported vehicles is excluded in the measurement of the fifty-five (55) feet.

(4) A tolerance of not more than five (5) percent shall be permitted on length before a carrier is deemed to be in violation of this section.

Section 2. Motor vehicles with increased dimensions from that specified in Section 1 of this regulation may be operated on certain highways. These specific highways will be referred to as the IDTT (increased dimension-twin trailer) system.

(1) Motor vehicles may not exceed the following width and length dimensions when operating on those highways listed in subsection (2) of this section:

(a) Width - 102 inches including any part of the body or load.

(b) Length - semitrailers - fifty-three (53) feet when operated in tractor semitrailer combination; trailers - twenty-eight (28) feet when operated in a tractor-semitrailertrailer combination, not to exceed two (2) trailers per truck tractor. There shall be no overall length limitation on motor vehicles operating on highways listed in subsection (2) of this section so long as the requirements set forth in this subsection are met. In a tractor semitrailer-semitrailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer which allows for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length; however, when there is no second semitrailer mounted to the fifth wheel, the length of the extension shall be included in the length measurement for the semitrailer.

(2) The following highways are designated to permit the operation of motor vehicles with increased dimensions which do not exceed the limitations stated in subsection (1) of this section:

(a) The Interstate and National Defense Highway System.

(b) And the following:

Jackson Purchase Parkway - From Tennessee state line west of Fulton to US 45 Bypass.

US 45 Bypass - From Jackson Purchase Parkway west of Mayfield to Jackson Purchase Parkway north of Mayfield.

Jackson Purchase Parkway - From US 45 Bypass to I-24 in Marshall County.

Western Kentucky Parkway - From I-24 south of Eddyville to US 31W in Hardin County.

Blue Grass Parkway - From I-65 at Elizabethtown to US 60 near Versailles.

Green River Parkway - From I-65 at Bowling Green to US 60 Bypass in Owensboro.

Mountain Parkway - From I-64 east of Winchester to KY 15 north of Campton.

Mountain Parkway Extension - From end of Mountain Parkway at Campton to US 460 at Salyersville.

Daniel Boone Parkway - From US 25 north of London to KY 15 north of Hazard.

Pennyrile Parkway - From US 41A at south city limits of Hopkinsville to US 41 south of Nortonville.

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

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

Audubon Parkway - From Pennyrile Parkway at Henderson to US 60 Bypass in Owensboro.

Cumberland Parkway - From I-65 at Warren County line to US 27 west of Somerset.

I-471 Connector - From US 27 in Campbell County to I-471.

KY 4 - The entire circle of Lexington.

KY 10 - From new construction 4.21 miles east of Bracken County line to US 62-68 at Maysville.

KY 11 - From KY 3170 at Lewisburg to US 62-68 in Maysville.

KY 15 - From Mountain Parkway at Campton to US 119 in Whitesburg.

KY 18 - From KY 338 at Burlington to US 25 in Florence.

KY 21 - From I-75 near Berea to US 25 in Berea.

US 23 - From Ohio state line to US 119 north of Pikeville.

US 23 - From US 119 near Jenkins to Virginia state line.

US 23 Spur - From Ohio River Bridge at Ashland.

US 25 - From US 421 south of Richmond to KY 876 in Richmond.

US 25 - From KY 418 southwest of Lexington to Nandino Boulevard, in Lexington (via KY 4).

US 25 - From US 42 in Florence to Ohio state line.

US 25E - From Virginia state line to I-75 north of Corbin.

US 27 - From Tennessee state line to Ohio state line (via KY 4 in Lexington).

US 31E - From Tennessee state line to KY 90 at Glasgow (via the Scottsville Bypass and the Glasgow Bypass).

US 31W - From Tennessee state line to KY 255 at Park City (via US 31W Bypass in Bowling Green).

US 31W - From US 31W Bypass in Elizabethtown to I-264.

US 31W Bypass - From Western Kentucky Parkway to US 31W in Elizabethtown.

KY 32 - From I-64 west of Morehead to US 60 at Morehead.

KY 35 - From US 127 at Bromley to I-71 north of Sparta.

KY 36 - From I-64 south of Owingsville to US 60 at Owingsville.

KY 36 - From US 42 in Carrollton to KY 227.

US 41 - From US 68 (Main Street) in Hopkinsville to US 68 (McLean Avenue) in Hopkinsville.

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

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

US 41A - From Tennessee state line to Pennyrile Parkway at south city limits of Hopkinsville.

KY 41A - From KY 112 in Earlington to KY 281 and KY 1751 in Madisonville.

US 42 - From I-264 northeast of Louisville to Oldham County line.

US 42 - From KY 55 at Carrollton to KY 47 at Ghent.

US 45 - From US 45 Bypass north of Mayfield to US 62 in Paducah.

US 51 - From KY 121 in Wickliffe to Illinois state line.

KY 52 - From KY 876 in Richmond to KY 499 at Irvine.

KY 55 - From Cumberland Parkway in Columbia to US 150 at Springfield.

US 60 - From US 51 in Wickliffe to I-24 in McCracken County.

US 60 - From East O'Banion Avenue in Morganfield to KY 425, the Henderson Bypass.

US 60 - From US 60 Bypass west of Owensboro to KY 69 at Hawesville.

US 60 - From I-264 east of Louisville to KY 1531 at Eastwood.

US 60 - From US 421 at Frankfort to I-75 near Lexington (via Versailles and KY 4 in Lexington).

US 60 - From junction of KY 180 near Cannonsburg to US 23 in Ashland.

US 60 - From KY 144 in Meade County to US 31W at Ft. Knox.

US 60 Bypass - From US 60 west of Owensboro to US 60 east of Owensboro.

US 61 - From Tennessee state line to KY 90 at Burkesville.

US 62 - From I-24 at Paducah to Western

Kentucky Parkway.
US 62 - From KY 245 at Bardstown to US 150 at Bardstown.
US 62 - From KY 353 southwest of Cynthiana to US 27 at Cynthiana.
US 68 - From US 62 at Reidland to KY 284 in McCracken County.
US 68 - From I-24 in Trigg County to Green River Parkway at Bowling Green.
US 68 - From US 27 at Paris to Ohio state line at Maysville (via Paris Bypass).
KY 69 - From US 60 at Hawesville to Indiana state line.
KY 79 - From KY 1051 in Brandenburg to Indiana state line.
KY 80 - From US 27 at Somerset to US 25 north of London.
KY 80 - From KY 15 at Hazard to US 23 at Allen.
KY 90 - From I-65 at Cave City to Cumberland Parkway at Glasgow.
KY 90 - From KY 61 at Burkesville to US 27 at Burnside.
KY 114 - From US 460 east of Salyersville to US 23-460 at Prestonsburg.
KY 118 - From Daniel Boone Parkway to US 421 and KY 80 northwest of Hyden.
US 119 - From KY 15 at Whitesburg to US 23 at Jenkins.
US 119 - From US 25E south of Pineville to US 421 at Harlan.
US 119 - From US 23 at Pikeville to KY 1141 northeast of Pikeville.
KY 121 - From US 45 Bypass at Mayfield to US 51 in Wickliffe.
US 127 - From US 127 Bypass north of Danville to US 127 Bypass south of Lawrenceburg.
US 127 Bypass - From US 127 south of Danville to US 127 north of Danville.
US 127 Bypass - From US 127 south of Lawrenceburg to US 127 - KY 151 north of Lawrenceburg.
US 127 - From KY 22 in Owenton to KY 35 at Bromley.
KY 144 - From KY 448 south of Brandenburg to US 60.
US 150 - From US 31E at Bardstown to US 27 at north city limits of Stanford (via 150 Bypass Danville).
KY 151 - From US 127 near Lawrenceburg to I-64 near Graefenburg.
KY 180 - From I-64 Interchange near Cannonsburg to US 60 and KY 180 at Cannonsburg.
KY 192 - From I-75 south of London to Daniel Boone Parkway east of London.
KY 205 - From Mountain Parkway at Helechawa to US 460 west of Index.
KY 212 - From KY 20 to Greater Cincinnati Airport (Boone County).
KY 227 - From KY 355 near Worthville to KY 36 at Carrollton.
US 231 - From US 60 Bypass in Owensboro to Indiana state line.
US 231 - From I-65 south of Bowling Green to US 31W Bypass in Bowling Green.
KY 236 - From KY 212 near airport to US 25 at Erlanger.
KY 237 - From KY 18 east of Burlington to I-275 in Boone County.
KY 245 - From I-65 south of Shepherdsville to US 62 at Bardstown.
KY 255 - From US 31W at Park City to I-65.
KY 259 - From Western Kentucky Parkway to US 62 in Leitchfield.
KY 281 - From US 41A in Madisonville to US 41.
KY 341 - From US 421 near Midway to I-64 near Midway.
KY 348 - From Jackson Purchase Parkway west of Benton to US 641 in Benton.
KY 418 - From US 25 south of Lexington to I-75 south of Lexington.
US 421 - From US 119 north of Harlan to 0.1 mile south of Harlan Appalachian Regional Hospital.
US 421 & KY 80 - From Daniel Boone Parkway to 2nd Street in Manchester.
US 421 - From KY 4 in Lexington to KY 341 near Midway.
US 421 - From US 460 in Frankfort to Broadway at railroad bridge.
KY 425 - From US 60 at Henderson to the Pennyrile Parkway.
US 431 - From US 60 Bypass in Owensboro to US 60 (4th Street) in Owensboro.
KY 446 - From US 31W northwest of Bowling Green to I-65.
KY 448 - From KY 1051 at Brandenburg to KY 144.
US 460 - From I-64 north of Mt. Sterling to KY 686 north of Mt. Sterling.
US 460 - From Mountain Parkway Extension to US 23 near Paintsville.
KY 546 - From KY 19 in Bracken County to KY 10 east of Germantown in Mason County.
KY 555 - From US 150 at Springfield to Bluegrass Parkway.
US 641 - From Tennessee state line to KY 348 in Benton.
KY 645 - From US 23 south of Ulysses to KY 40 west of Inez.
KY 676 - From US 127 in Frankfort to US 60.
KY 686 - From KY 11 south of Mt. Sterling to US 460 north of Mt. Sterling.
KY 841 - From KY 155 near Jeffersontown to US 42 northeast of Louisville.
KY 841 - From US 31W (Dixie Highway) in southwestern Jefferson County to I-65.
KY 859/KY 57 - From I-64 east of Lexington to Lexington - Bluegrass Army Depot.
KY 876 - From I-75 at Richmond to KY 52 east of Richmond.
KY 922 - From KY 4 in Lexington to junction of I-64 and I-75.
KY 1051 - From KY 448 south of Brandenburg to KY 79.
KY 1682 - From US 68 west of Hopkinsville to Pennyrile Parkway.
KY 1958 - From KY 627 south of Winchester to I-64 at Winchester.
KY 1998 - From US 27 at Cold Springs to KY 8 at Silver Grove.

(3) All dimensions specified in this section shall not be subject to any enforcement tolerances provided in any other section.
(4) Motor vehicles with the increased dimensions specified in subsection (1) of this section shall be allowed five (5) driving miles on state maintained highways from the Interstate and the designated route network for the purpose of attaining reasonable access to terminals; facilities for food, fuel, repairs and rest; and points of loading and unloading for household goods carriers.

O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: December 1, 1989
FILED WITH LRC: December 5, 1989 at 11 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:101. Definitions relating to paramedics.

RELATES TO: KRS 311.650 to 311.658, 311.990(18)
STATUTORY AUTHORITY: KRS 311.654
NECESSITY AND FUNCTION: KRS 311.654 directs the [State] Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to define terms that are used in regulations promulgated by the board relating to paramedics.

Section 1. Definitions. As used in board regulations relating to paramedics, the following terms shall have the meanings set forth below unless the context requires otherwise:

(1) "Advanced life support unit" means a motor vehicle, vessel, or aircraft designed and used primarily for on-the-scene care or transportation of critically ill or critically injured patients and is equipped with such equipment as specified by the board as being essential to the proper functioning of an advanced life support unit.

(2) "Applicant" means any person applying for training or certification as a paramedic under this regulation.

(3) "Board" means the [State] Board of Medical Licensure.

(4) "Certificate" means the certificate issued by the Board of Medical Licensure pursuant to this regulation to any individual qualifying pursuant to this regulation to perform the duties of a paramedic.

(5) "Certified" means one who holds a certificate issued pursuant to this regulation.

(6) "Committee" means the Paramedic Advisory Committee as appointed by the board to act in an advisory capacity.

(7) "Emergency situation" means a [an unforeseen] circumstance or combination of circumstances, regardless of place of occurrence, requiring immediate or [and] continued medical response and intervention to safeguard the life or physical well-being of any patient. It also includes any circumstance where a patient is being transferred from one (1) medical facility to another location and the sending physician believes that advanced life support techniques may be required in the patient's best interest.

(8) "Emergency medical technician (EMT)" means a qualified individual currently certified by the Kentucky Department for Human Resources as an emergency medical technician, emergency medical technician-ambulance, emergency medical technician-instructor, or emergency medical technician instructor-trainer.

(9) "Equipment" means that equipment required by the board to be carried and maintained on an advanced support unit.

(10) "[Graduate] Paramedic graduate" means any person who has successfully completed the didactic and clinical portions of a board-approved paramedic training course and who has not completed the requirements for state certification, or an individual as outlined in 201 KAR 9:136, Section 2.

(11) "Medical director [advisor]" means a Kentucky licensed physician selected to supervise paramedics by the provider with the approval of the board and as outlined in 201 KAR 9:171, Section 2(6) [regional emergency medical services system's clinical director].

(12) "Paramedic" means a person who is primarily involved in the delivery of emergency medical services and is certified under KRS 311.652 to 311.658.

(13) "Paramedic trainee" means a qualified person who is enrolled in a paramedic training course authorized and approved by the board pursuant to this regulation.

(14) "Patient" means an individual who is sick, injured, [dead] or otherwise incapacitated or helpless.

(15) "Provider" means the licensed operator of any advanced life support system [unit] within the Commonwealth of Kentucky, or any person utilizing a paramedic, paramedic trainee, or [graduate] paramedic graduate, except a person utilizing a paramedic as an instructor in a training course authorized and approved by the board.

(16) "Supervising physician" means a licensed physician selected by the medical director who agrees [advisor] to supervise paramedics.

(17) "Approved in-service training":

(a) For active status means any training approved by the advanced life support provider's medical director;

(b) For inactive status means any training or continuing education on any subject covered by the Emergency Medical Technician-Paramedic National Standard Curriculum or any subject for which instruction is authorized by the committee.

(18) "Physician coordinator" means a qualified Kentucky licensed physician who serves in the capacity outlined in 201 KAR 9:111, Section 5.

(19) "Course coordinator" means an individual as outlined in 201 KAR 9:111, Section 6.

(20) "Probationary status":

(a) May be granted to a person who is certified as a paramedic in the Commonwealth of Kentucky who is currently on inactive status desiring to return to active status as outlined in 201 KAR 9:121, Section 7;

(b) An individual on probationary status may perform the skills of a certified paramedic provided that the individual on probationary status is under the direct supervision of the medical director, supervising physician, registered nurse or certified paramedic.

(21) "Temporary certificate" means the certificate issued by the Board of Medical Licensure to perform the duties of a certified paramedic as outlined in 201 KAR 9:121, Section 4(4) or 201 KAR 9:136, Section 3.

(22) "Advanced cardiac life support certification (ACLS)" means minimally certified as a provider by the American Heart Association in advanced cardiac life support.

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 23, 1990 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 January 18, 1990, 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: The proposed amendment would mainly affect those newly trained and applications for recertification, although all paramedics will be affected by the definition clarifications.

(a) Direct and indirect costs or savings to those affected: There will be no direct or indirect costs to the paramedics of this Commonwealth.

1. First year: No direct or indirect costs or savings are contemplated by amending this regulation.

2. Continuing costs or savings: The only costs and savings contemplated will be the savings by the board as it is hoped these definitions will clarify those needing clarification and save the board time and expense associated with unclear definitions.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors known which would increase or decrease costs.

(b) Reporting and paperwork requirements: This regulation as proposed would not increase or decrease paperwork or reporting requirements.

(2) Effects on the promulgating administrative body: The regulation will greatly save the board time and expense as the definitions are expanded and attempts made to clarify unclear definitions.

(a) Direct and indirect costs or savings: Costs savings in staff time and effort cannot be adequately calculated.

1. First year: Cannot be adequately calculated.

2. Continuing costs or savings: Cannot be adequately calculated, but it is perceived that the costs savings will continue year after year.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing except the paperwork and reporting requirements of the board.

(b) Reporting and paperwork requirements: The board's reporting and paperwork requirements are anticipated to decrease as the questions on definition clarifications are expected to decrease.

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives considered, however, a number of paramedics and physicians voiced concern that the definitions needed clarification and, the board also felt they needed clarification.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not aware of any statute, regulation or policy which this proposed amendment is in conflict, overlaps or duplicates.

(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 and its Paramedic Advisory Committee both feel the definition section needs clarifying as proposed.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:111. Application and training course [, certification] requirements.

RELATES TO: KRS 311.650 to 311.658, 311.990(18)
STATUTORY AUTHORITY: KRS 311.654

NECESSITY AND FUNCTION: KRS 311.654 directs the [State] Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to establish requirements for applicants; requirements for the selection process; requirements for the training course, physician coordinator, and course coordinator. [requirements and exemptions for certification of paramedics; prohibitions relating to the use of paramedics; and to define inactive service of paramedics.]

Section 1. Requirements for Applicants, Selection of Applicants, and Training. No paramedic training course shall be authorized or approved by the board that does not conform with the standards set forth in this regulation as [for] requirements for applicants, selection of applicants, and training course requirements[, except that any paramedic training course that began prior to the effective date of this regulation and otherwise conforms with the standards for training course requirements set forth in this regulation may be approved by the board].

Section 2. Requirements for Applicants. Each applicant shall:

(1) Be eighteen (18) years of age or older; and [.]

(2) Hold a valid motor vehicle operator's license; and [.]

(3) Be of good moral character; and [.]

(4) Not be habitually addicted to or an abuser of alcoholic beverages, drugs, or controlled substances; and [.]

(5) Understand and be able to read, speak, and write the English language; and [.]

(6) Have a physical examination performed which shall include a chest x-ray or tuberculin test (may be waived by the committee in extenuating circumstances), by a licensed physician [licensed in this state] within the twelve (12) months immediately preceding the

date of application verifying that the applicant is in good physical health and has no disabilities that would prevent the applicant from functioning as a paramedic; and [, which shall include a chest x-ray or tuberculin test.]

(7) Be currently certified as an emergency medical technician by having completed a training program that meets the minimum requirements of the Department of Transportation EMT basic curriculum and the requirements of the Kentucky emergency medical technician curriculum as administered by the Cabinet for Human Resources; and [by the Kentucky Department for Human Resources as an emergency medical technician, emergency medical technician-ambulance, emergency medical technician-instructor, or emergency medical technician instructor-trainer.]

(8) Have a high school diploma or general equivalency diploma; and [.]

(9) Submit a notarized application form provided by the board to the board and to the medical director; and [advisor.]

(10) Submit a notarized application form to the Paramedic Advisory Committee of the Kentucky Board of Medical Licensure. The application must be completed in detail and have attached to it the following:

(a) Proof of current certification as an emergency medical technician in the Commonwealth of Kentucky or eligibility to challenge the Commonwealth of Kentucky EMT examination. Certification as an EMT in Kentucky must be attained by the applicant within six (6) months of his acceptance into the paramedic training program; and

(b) A certified copy of the applicant's birth certificate; and

(c) A copy of the applicant's operators license.

(11) The following may be grounds for denial of application to a paramedic training program:

(a) Be convicted as a youthful offender;

(b) Be convicted of a felony;

(c) Be discharged from the Armed Forces with a dishonorable discharge;

(d) Be court adjudicated as mentally incompetent.

Section 3. Selection Process [Committee]. (1) Committee. Each physician coordinator [medical advisor] shall appoint a selection committee to administer tests and to conduct interviews for the purpose of qualifying applicants to be accepted into paramedic training courses. The committee must minimally consist of the physician coordinator of the training course or his physician designee and the course coordinator and other individuals as deemed necessary by the physician coordinator.

(2) Prerequisite testing.

(a) Shall be required of each student. The test, as outlined by policy of the committee, shall be used to evaluate each applicant's ability in mathematics and reading.

(b) Competency in basic EMT skills knowledge may also be required by each applicant utilizing a testing procedure outlined by the course coordinator.

(c) Other tests may be administered at the discretion of the course coordinator or physician coordinator. Any test administered must be listed on the course application.

(d) Any test utilized other than those established by the policy of the committee must have prior approval for each application submitted.

(3) Each component of the prerequisite testing shall be weighed in the overall selection process as determined by the physician coordinator.

(4) Oral interviews shall be conducted with each applicant by the selection committee as outlined in subsection (1) of this section unless waived by the Paramedic Advisory Committee.

Section 4. Paramedic Training Course Requirements. The training course shall:

(1) Minimally include the current revision of the U.S. Department of Transportation curriculum and such alterations to the curriculum as prescribed by the board.

(2) Minimally meet the suggested classroom and clinical rotation hours as set forth in the current revision of the "Emergency Medical Technician-Paramedic: National Standard Curriculum" published by the U.S. Department of Transportation, Washington, D.C. A copy of this publication shall be on file in the office of the Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207, and shall be available for public inspection.

(3) Consist of a minimum of 500 hours of supervised prehospital field internship experience.

(a) Before clinical completion and prior to the beginning of field internship experience, the paramedic trainee must exhibit clinical competence in the authorized skills and procedures outlined in 201 KAR 9:161;

(b) The paramedic trainee must be ACLS certified prior to the beginning of prehospital field internship.

(4) Be conducted at locations approved and authorized by the board including, as part of the instruction, training at hospitals licensed to operate in this state and with approved advanced life support providers.

(5) Commence within 120 days following approval by the Kentucky Board of Medical Licensure.

Section 5. Physician Coordinator Requirements. The paramedic training course shall have a physician coordinator who shall minimally:

(1) Participate as a member of the selection committee as outlined in Section 3 of this regulation;

(2) Provide medical consultation and guidance for the course coordinator;

(3) Agree to provide and certify that periodic selective oral review has been successfully completed by the paramedic trainee or paramedic graduate;

(4) Certify that each paramedic graduate has attained a level of proficiency suitable to allow him/her to apply for the certification examination;

(5) Review and approve recommendations of the course coordinator for potential course faculty;

(6) Qualifications of the physician coordinator:

(a) Familiarity with the design and operation of prehospital EMS systems.

(b) Experience in prehospital emergency care of the acutely ill or injured patient.

(c) Familiarity with base station radio control of prehospital emergency units.

(d) Experience in emergency management of the acutely ill or injured patient.
(e) Routine active participation in emergency management of the acutely ill or injured patient.

Section 6. Course Coordinator Requirements. The paramedic training course shall have a course coordinator who shall minimally:
(1) Be a certified paramedic or licensed as a registered nurse, in the Commonwealth of Kentucky, and be approved by the physician coordinator and the board upon recommendation of the committee.
(2) Be responsible for organization, implementation, coordination and supervision of the paramedic training program for which they serve as course coordinator, this includes, but is not limited to, the following:
(a) Participate as a member of the selection committee as outlined in Section 3 of this regulation;
(b) Select potential course faculty and obtain authorization from the physician coordinator for their utilization;
(c) Lesson planning and preparation of subject areas to be presented by either the course coordinator or selected faculty;
(d) Written and oral testing of trainees or graduates and the development of such tests and testing procedures;
(e) Administrative reporting as may be required by the committee;
(f) Maintenance of attendance records; classroom, clinical and field internship;
(g) Maintenance of evaluations completed by physicians, clinical supervisors or preceptors;
(h) Maintenance and inventory of equipment required for the training program;
(i) Coordination/supervision of students during clinical rotations; coordination of clinical rotation schedules with appropriate facility staff;
(j) Coordination/supervision of students during field internship. Coordination of field internship schedules with appropriate facility staff;
(k) Any other responsibilities as may be required by the committee.
(3) Minimally, the course coordinator must be currently certified by the American Heart Association as an advanced cardiac life support instructor.

[Section 4. Prohibition or Usage of Unauthorized Person. No provider shall employ, utilize, permit the operation of, or advertise or represent that said provider employs or utilizes certified paramedics, graduate paramedics, or paramedic trainees personnel unless provider is in compliance with the provisions of this regulation.]

[Section 5. Prohibited Utilization of Certified Paramedics. Nothing in this regulation shall be construed to permit certification or utilization of any certified paramedic, graduate paramedic, or paramedic trainee for the purpose of such individual working full-time with primary responsibility and duties limited to hospitals, physician's offices, clinics, or other definitive care facilities.]

[Section 6. Inactive Status of Certified Paramedics. In the event a certified paramedic discontinues his employment with a provider or with a training institution, he shall be deemed to be in inactive status and shall not perform the services of a certified paramedic unless subsequently employed by a new provider or training institution. Upon reemployment by a new provider, the certified paramedic shall immediately notify the board of the name and address of his new provider or training institution.]

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 23, 1990 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 January 18, 1990, 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: This proposed amendment would affect the applicants applying for training course approval and the board.
(a) Direct and indirect costs or savings to those affected: This proposed amendment would directly affect the training courses in that it specifically sets out what must be included in their training curriculum. This, of course, would add costs.
1. First year: Costs cannot be adequately calculated.
2. Continuing costs or savings: After initial cost of putting together the training program, the board does not anticipate continuing costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): In the long run, the board feels that costs will decrease as all training courses must meet minimal standards and therefore better trained paramedics will not need further training and education.
(b) Reporting and paperwork requirements: Initially there will be an increase in paperwork and reporting requirements as these minimal training course standards are initiated.
(2) Effects on the promulgating administrative body: The board will be effected and initially its workload will increase while training course applicants are screened to insure compliance with minimal standards.
(a) Direct and indirect costs or savings: In the long run, the board feels that savings will

result as standards will now guide training courses and no longer will each course be reviewed on an individual basis.

1. First year: Costs cannot be adequately calculated for first year.

2. Continuing costs or savings: Continued savings are contemplated, but cannot be adequately calculated.

3. Additional factors increasing or decreasing costs: Increased workload to board's staff will increase costs initially.

(b) Reporting and paperwork requirements: The board's reporting and paperwork requirements are anticipated to increase initially, but decrease as system becomes functional.

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives considered, however rejected as board felt that minimal standards must be issued to guide paramedic training courses which previously had no real guidance or direction.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not aware of any statute, regulation or policy which is in conflict, overlaps or is duplicative of this proposed amendment.

(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: Both the board and Paramedic Advisory Committee feel these minimal training course requirements are necessary for the board to insure qualified paramedics are graduated to seek employment in the Commonwealth of Kentucky.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:121. Active and inactive status, certification, renewal of certification, reactivation.

RELATES TO: KRS 311.650 to 311.658, 311.990(18)

STATUTORY AUTHORITY: KRS Chapter 13A, 311.654, 311.656

NECESSITY AND FUNCTION: KRS 311.654 directs the [State] Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to establish requirements for certification, [training, and] renewal of [paramedic] certification, and reactivation of certification. This regulation also defines active and inactive status of certified paramedics.

Section 1. Active Status of Certified Paramedics. (1) A paramedic shall be considered on "active status" as long as continuous employment is maintained with an approved ALS provider and his certification is maintained pursuant to Section 6(1) of this regulation. Employment shall be defined as a "significant portion" of time spent by the paramedic in the direct delivery of advanced life support skills. The "significant portion" shall be defined by the medical director; or

(2) A paramedic shall be considered on "active status" if he/she is being utilized by a training institution for the purpose of instructing a paramedic training course authorized and approved by the board.

Section 2. Inactive Status of Certified Paramedics. (1) A paramedic shall be deemed on "inactive status" if:

(a) Employment with a provider is terminated; or

(b) There is any cessation in the active delivery of advanced life support patient care skills for a period of greater than 120 days, even though continuous employment with a provider may be maintained (i.e., medical leave, military leave, or any other leave of absence approved by the provider).

(2) It shall be the joint responsibility of the paramedic and the provider to notify the board of any condition which may constitute a change in status.

(3) A paramedic on inactive status shall not be allowed to function as a certified paramedic.

[Section 1. Paramedic Training Course Requirements. The training course shall:]

[(1) Include the U.S. Department of Transportation curriculum and such additions to the curriculum as prescribed by the board.]

[(2) Be of at least 500 hours duration.]

[(3) Be supervised by a medical advisor with such assistance of a registered nurse or certified paramedic as the medical advisor deems necessary.]

[(4) Have a training course faculty composed of appropriate professionals, clinical, academic, and technical instructors.]

[(5) Be conducted at locations approved and authorized by the board including, as part of the instruction, training at a hospital licensed to operate in this state.]

Section 3. [2.] Issuance of Certification [and Renewal]. Certificates shall be issued by the board pursuant to the standards set forth in these regulations. A paramedic graduate [trainee] shall be eligible to take the certifying examination prescribed by the board within thirty (30) months of the commencement of the paramedic training course in which they were a student and which was authorized and approved by the board, provided that:

(1) [Within thirty (30) months of the commencement of a paramedic training course authorized and approved by the board,] The paramedic graduate [trainee] has successfully completed said training course; and

(2) [Within thirty (30) months of commencement of such training course,] The paramedic graduate [trainee] has successfully completed a field internship [clinical evaluation] of at least 500 hours duration; and [.]

(3) The [A] paramedic graduate has received [trainee is eligible to take the certifying examination upon] the written recommendation of the physician coordinator [medical advisor] and verification that the paramedic graduate [trainee] has completed the requirements of subsections (1) and (2) of this section; and [.]

(4) The paramedic graduate holds current certification as a Kentucky EMT; and [Within thirty (30) months of commencement of such training course, the paramedic trainee must

complete the initial certification test.]

(5) The paramedic graduate holds current certification by the American Heart Association as an advanced cardiac life support provider; and

(6) Failure to complete all requirements for paramedic certification within thirty (30) months of the commencement of his/her training program shall result in the paramedic graduate being ineligible for certification.

Section 4. [3.] Paramedic Certification Examination. (1) The board shall prescribe the format and content of the paramedic certification examination which shall include written, oral, and practical examination. Such examination shall be held in a manner and at times and locations prescribed by the board.

(2) A paramedic graduate who fails only two (2) sections of the examination process will be allowed a retest of the section(s) failed. This opportunity will be offered in approximately thirty (30) days, or as scheduled by the board.

(a) If the paramedic graduate again fails, he shall remain on paramedic graduate status and shall be scheduled for the next board exam in approximately six (6) months. At that testing a paramedic graduate who fails only two (2) sections of the exam process will be allowed a retest of the section(s) failed in approximately thirty (30) days or as scheduled by the board.

(b) Failure to successfully complete all aspects of the retesting process at that time will result in the paramedic graduate status being terminated and the individual will have to successfully repeat a board approved paramedic training program in order to be eligible for further testing.

(c) The board shall have discretionary power to extend the thirty (30) month time limit for certification under extraordinary circumstances.

(3) The paramedic graduate who fails three (3) or more sections of the board exam will retain his status as a paramedic graduate and will be rescheduled for the next board exam in approximately six (6) months.

(a) At that testing a paramedic graduate who fails only two (2) sections of the exam process will be allowed a retest of the section(s) failed in approximately thirty (30) days or as scheduled by the board.

(b) Failure to successfully complete all aspects of the retesting process at that time will result in the paramedic graduate status being terminated and the individual will have to successfully repeat a board approved paramedic training program in order to be eligible for further testing.

(c) The committee shall have discretionary power to extend the thirty (30) month time limit for certification under extraordinary circumstances.

(4) Temporary certificate. Upon satisfactory completion of the paramedic certification examination and submission of all required forms and fees, the Executive Director of the Kentucky Board of Medical Licensure may issue a temporary certificate to the applicant if the executive director believes that the applicant satisfies all requirements for paramedic certification. The temporary certificate shall enable the holder to practice as a certified paramedic pursuant to KRS 311.654 and shall remain in effect until the holder is issued paramedic certification by the board or until cancelled, but in no event shall the temporary permit be effective longer than six (6) months from the date of issuance. A temporary certificate may not be renewed or reissued.

Section 5. [4.] Expiration of Certification. Upon successful completion of the certification examination, the [graduate] paramedic graduate shall be issued a certificate which shall be valid for two (2) years from date of issuance.

Section 6. [5.] Renewal of Certification. Renewal of paramedic certification occurs on a biennial basis according to the criteria outlined in subsections (1) and (2) of this section. It is the responsibility of the paramedic to keep the board informed of any change in address or change in employment within thirty (30) days of such change. [In order to renew a certificate, the paramedic must obtain a minimum of sixty (60) hours of approved in-service training and have successfully passed a renewal examination prescribed by the board (minimum score of eighty (80)) within thirty (30) months of issuance of his last certificate.]

(1) Active status. Certified paramedics on active status shall be required to meet the following criteria for renewal of certification:

(a) File a completed application as furnished by the board along with the appropriate fee.

(b) Maintain current certification as an emergency medical technicial by the Cabinet for Human Resources in the Commonwealth of Kentucky.

(c) Maintain current ACLS certification by the American Heart Association.

(d) Submit a recommendation from the medical director and annual evaluations.

(e) Submit verification from the medical director of sixty (60) hours of approved in-service training within the last two (2) years.

(f) Pass the written paramedic recertification exam with a minimum score of eighty (80) prior to the expiration of his certification. If a passing score is not obtained on the first attempt, the certified paramedic, shall have their expiration date extended by a period not greater than ninety (90) days. The paramedic's medical director shall meet with the certified paramedic and review with him/her the results of the first test. The certified paramedic shall be required to obtain in-service education in areas of documented weakness. Hours of in-service education required in each subject area shall be determined by the medical director. After the certified paramedic has met the in-service education requirements outlined by the medical director, he/she shall be allowed to test a second time. If on the second test a minimum score of eighty (80) is not obtained by the certified paramedic, he/she shall be considered as not having met the criteria for recertification and as such will not be recertified as a paramedic.

(g) Failure to comply with the above recertification requirements will result in the loss of paramedic certification.

(2) Inactive status. Certified paramedics on inactive status shall be required to meet the following criteria for renewal of certification:

(a) File a completed application as furnished by the board along with the appropriate fee.

(b) Maintain current certification as an emergency medical technician by the Cabinet for Human Resources in the Commonwealth of Kentucky.

(c) Submit verification of sixty (60) hours of

approved in-service training within the last two (2) years.

(d) Failure to comply with the above recertification requirements will result in the loss of paramedic certification.

Section 7. Reactivation of Certified Paramedic Status. Certified paramedics returning to active status must meet the following criteria:

(1) As required in Section 6 of this regulation, the board must be notified by the paramedic within thirty (30) days of any employment which would result in a change in his/her paramedic status.

(2) The ALS provider shall also notify the board in writing of the effective date of employment of any certified paramedic.

(3) The medical director of the new provider shall request the board to consider the inactive paramedic for reactivation.

(4) After approval of the provider's medical director and notification to the board, the inactive paramedic may be granted probationary status and function as such. The certified paramedic on probationary status shall be required to function on probationary status for a maximum of 180 days. Within the 180 day period, the medical director must certify to the board, in writing, his satisfaction with the certified paramedic's proficiency in required skills and recommend a return to active status. The medical director must also submit an evaluation form as supplied by the board. The testing procedure as outlined in Section 4 of this regulation must be accomplished within the 180 day time period outlined above.

(5) Possess current ACLS certification by the American Heart Association.

(6) Inactive paramedics who have been inactive for a period greater than 120 days but less than three (3) years are required to sit for the written recertification exam. The written paramedic recertification exam must be successfully completed, with a minimum score of eighty (80). If a passing score is not obtained on the first attempt, the certified paramedic will remain on probationary status for a period not to exceed ninety (90) days. The paramedic's medical director shall meet with the certified paramedic and review with him/her the results of the first test. The certified paramedic shall be required to obtain in-service education in areas of documented weakness. Hours of in-service education required in each subject area shall be determined by the medical director. After the certified paramedic has met the in-service education requirements outlined by the medical director, and functioned on probationary status for a period not to exceed an additional ninety (90) days, he/she shall be allowed to test a second time. If on the second test a minimum score of eighty (80) is not obtained by the certified paramedic, he/she shall be considered as not having met the criteria for return to active status and as such will be retained on inactive status.

(7) Inactive paramedics who have been inactive for a period exceeding three (3) years are required to sit for the certification exam. Inactive paramedics sitting for the certification exam shall meet the following testing requirements:

(a) An inactive paramedic who fails only two (2) sections of the examination process will be allowed a retest of the section(s) failed. This opportunity will be offered in approximately thirty (30) days, or as scheduled by the board. If the inactive paramedic again fails, he shall remain on probationary status and shall be scheduled for the next board exam in approximately six (6) months. At that testing an inactive paramedic who fails only two (2) sections of the exam process will be allowed a retest of the section(s) failed in approximately thirty (30) days or as scheduled by the board. Failure to successfully complete all aspects of the retesting process at that time will result in the paramedic being retained on inactive status.

(b) The inactive paramedic who fails three (3) or more sections of the board exam will retain his probationary status and will be rescheduled for the next board exam in approximately six (6) months. At that testing an inactive paramedic who fails only two (2) sections of the exam process will be allowed a retest of the section(s) failed in approximately thirty (30) days or as scheduled by the board. Failure to successfully complete all aspects of the retesting process at that time will result in the probationary status being revoked and the paramedic will be retained on inactive status.

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 23, 1990 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 January 18, 1990, 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 active and inactive paramedics with Kentucky certification in addition to recent paramedic graduates.

(a) Direct and indirect costs or savings to those affected: There will be direct costs to paramedics who allow their certificates to become inactive. They will have to apply for reactivation which will require payment of a fee.

1. First year: Costs cannot be adequately calculated.

2. Continuing costs or savings: Costs cannot be adequately calculated, but costs will continue if paramedics allow their certificate to become inactive.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Not aware of any additional factors which would increase or decrease costs.

(b) Reporting and paperwork requirements: Paperwork and reporting requirements would increase for the paramedic who allows his certificate to be inactive.

(2) Effects on the promulgating administrative body: Board's workload will increase as inactives must be notified and by reviewing all applications to reactivate certificates where appropriate.

(a) Direct and indirect costs or savings: Costs and workload will increase for the board and their staff by regulating the paramedic.

1. First year: Costs cannot be adequately calculated.

2. Continuing costs or savings: Costs cannot be adequately calculated, however, payment of fees should cover any additional administrative costs.

3. Additional factors increasing or decreasing costs: Not aware of any additional factors which would increase or decrease costs.

(b) Reporting and paperwork requirements: Paperwork and reporting requirements would definitely increase by the board reviewing all applications and acting on these applications.

(3) Assessment of anticipated effect on state and local revenues: No impact anticipated on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Current regulations do not address the "active/inactive" differences, and the board felt it appropriate to clarify these differences by amending the regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not aware of any statute, regulation or policy which is in conflict, overlaps or is duplicated by this amended 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 regulations have not in the past clearly delineated the difference between "active" and "inactive" and how certification can be reactivated.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:136. Procedure for certification of paramedics from other states; graduate paramedics; issuance of temporary certificates [Reciprocity].

RELATES TO: KRS 311.650 to 311.658, 311.990(18)
STATUTORY AUTHORITY: KRS 311.654
NECESSITY AND FUNCTION: KRS 311.654 directs the [State] Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to establish procedures whereby paramedics certified in other states may apply for certification in Kentucky.

Section 1. Procedure for Certification. In order to be eligible for consideration for certification as a paramedic, the applicant must fulfill the following minimum requirements:

(1) Be eighteen (18) years of age or older; and

(2) Hold a valid motor vehicle operator's license; and

(3) Not be habitually addicted to or be an abuser of alcoholic beverages, drugs, or controlled substances; and

(4) Be able to demonstrate the ability to understand, read, speak, and write the English language; and

(5) Have a high school diploma or General Equivalency Diploma; and

(6) Be of good moral character; and

(7) Have successfully completed an emergency medical technician training course conducted in accordance with the U.S. DOT guidelines; and

(8) Have successfully completed a paramedic training course which included all aspects of the U.S. DOT paramedic training curriculum and which consisted, as a minimum, of the recommended accepted hours for classroom instruction and in-hospital clinical experience required by the curriculum at the time of the training. In addition, the applicant shall:

(a) Have completed 500 hours of supervised prehospital field internship. This requirement may be met by documented advanced life support ambulance experience; and

(b) Be currently certified as a paramedic or its equivalent in another state; and

(9) Have a physical examination performed within the twelve (12) months immediately preceding the date of application verifying that the applicant is in good physical health and has no disabilities that would prevent the applicant from functioning as a paramedic. This examination shall also include a chest x-ray or tuberculin skin test; and

(10) Submit a letter of recommendation from the provider's medical director which states that he/she agrees to supervise the individual as a paramedic graduate or to allow the individual to function on a temporary certificate under the supervision of the medical director; and

(11) Submit a notorarized application form to the Paramedic Advisory Committee of the Kentucky Board of Medical Licensure. The application must be completed in detail and have attached to it the following:

(a) Proof of current certification as an emergency medical technician in the Commonwealth of Kentucky or eligibility to challenge the Commonwealth of Kentucky EMT examination. Certification as an EMT in Kentucky must be attained by the applicant within six (6) months of his approval to challenge the paramedic certification exam; and

(b) Proof of current certification as a paramedic in another state; and

(c) Completed certificate of paramedic training form as supplied by the Kentucky Board of Medical Licensure. If the training curriculum schedule varies from that of the current revision of the U.S. DOT EMT-paramedic curriculum, the applicant shall also attach to his application a copy of the curriculum schedule, and number of hours of the paramedic training completed, along with the name of the physician supervising the training program who can be contacted if additional information is required; and

(d) Submit an evaluation form as supplied by the board from your most recent medical director or supervising physician or advanced life support provider; and

(e) Submit a letter from the Kentucky advanced life support provider's medical director agreeing to supervise the applicant as outlined in subsection (14) of this section; and

(f) A certified copy of the applicant's birth certificate; and

(g) A copy of the applicant's operators license; and

(h) Proof of current certification in advanced cardiac life support by the American Heart Association; and

(i) Submit the appropriate application fee as outlined in 201 KAR 9:151, Section 2(1).

(12) The following may be grounds for denial of the challenge applicant:

(a) Be convicted as a youthful offender;

(b) Be convicted of a felony;

(c) Be discharged from the Armed Forces with a dishonorable discharge;

(d) Be court adjudicated as mentally ill or mentally retarded. [Paramedics currently certified in other states may make application to the board for certification as a paramedic in this state. Each applicant shall submit a letter from a provider in this state stating that the applicant will be considered for employment. The applicant shall also submit a letter of recommendation from the provider's medical advisor agreeing to supervise the paramedic in the event he is certified in this state. If in the opinion of the board, the applicant meets all of the board's requirements, the board may admit such applicant to the Kentucky paramedic certification examination, upon payment of required fees.]

Section 2. Graduate Certification. (1) The committee shall review each application on an individual basis and at its discretion determine if the applicant may be permitted to function as a paramedic graduate.

(2) If the applicant has complied with Section 1(1) through (15) inclusive, but has not completed a supervised field internship, the applicant may be considered for paramedic graduate status. Upon completion of these additional hours of field internship, as determined by the applicant's medical director, the applicant, upon recommendation by his medical director, may be eligible to sit for the paramedic certification exam.

(3) An applicant that is granted paramedic graduate status shall be admitted to such status for a period not to exceed a period of twelve (12) months from the date of issuance. Within the twelve (12) month period, the applicant must:

(a) Complete the post-training field internship period required by the medical director if he/she has not already done so; and

(b) Successfully complete all components of the paramedic certification examination. At least one (1) month prior to the exam, the applicant must submit to the committee:

1. Letters from the provider and medical director verifying that the applicant has completed the requisite field internship experience; and

2. The appropriate fee as outlined in 201 KAR 9:151, Section 2(1) and (2).

(c) In the event that the applicant meets all the requirements for certification and successfully completes the paramedic certification exam, he shall be certified for a period of two (2) years from the date of issuance of the certificate;

(d) If at any time during which the applicant is authorized to perform as a paramedic graduate, the provider's medical director advises the committee that the applicant's performance is unsatisfactory, upon due process, the committee may revoke the paramedic graduate status and the applicant shall not be permitted to participate in the paramedic certification exam;

(e) Examination process. An out-of-state challenge applicant granted paramedic graduate status shall be subject to the testing procedures outlined in 201 KAR 9:121, Section 4(2)(a), (3)(a) and (b) of this regulation;

(f) Failure to comply with the requirements for certification of paramedics from other states shall not prohibit an applicant from making subsequent application to a paramedic training course approved by the board.

Section 3. Temporary Certificate. (1) The committee shall review each application on an individual basis and at its discretion grant the applicant a temporary certificate to function as a certified paramedic in the Commonwealth of Kentucky.

(2) Requirements. The applicant must comply with Section 1(1) through (15) of this regulation.

(3) Authority to issue temporary certificate.

(a) The Executive Director of the Kentucky Board of Medical Licensure upon the recommendation of the Paramedic Advisory Committee shall have the authority to issue a temporary certificate for a period not to exceed six (6) months.

(b) The Executive Directory of the Kentucky Board of Medical Licensure upon the recommendation of the Paramedic Advisory Committee shall have the authority to revoke a temporary certificate.

(4) Examination process.

(a) The individual issued a temporary certificate must sit for the first available paramedic certification exam offered.

(b) If the applicant fails only two (2) sections of the examination process, he/she will be allowed a retest offered approximately thirty (30) days later, or as scheduled by the board. Failure of this retest will result in the revocation of the temporary certificate and the applicant will be placed on paramedic graduate status for a period not to exceed six (6) months. The applicant must then take the next regularly scheduled paramedic certification exam. At that testing, the applicant who fails only two (2) sections of the exam process will be allowed a retest of the section(s) failed in approximately thirty (30) days or as scheduled by the board. Failure to successfully complete all aspects of the retesting process at that time will result in the paramedic graduate status being terminated and the individual will have to take a board approved paramedic training program in order to be eligible for further testing.

(c) If the applicant fails three (3) or more sections of the board exam, he will be rescheduled for the next board exam in approximately six (6) months. The temporary certificate shall be revoked and the individual

will be placed on paramedic graduate status for a period not to exceed six (6) months. At that testing, the applicant who fails only two (2) sections of the exam process will be allowed a retest of the section(s) failed in approximately thirty (30) days or as scheduled by the board. Failure to successfully complete all aspects of the retesting process at that time will result in the paramedic graduate status being terminated and the individual will have to take a board approved paramedic training program in order to be eligible for further testing.

(d) Failure to comply with the requirements for certification of paramedics from other states shall not prohibit an applicant from making subsequent application for a paramedic training course approved by the board.

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 23, 1990 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 January 18, 1990, 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: Those paramedics applying for certification in the Commonwealth of Kentucky who are currently certified in another state, applicants for graduate certification and issuance of temporary certificates.

(a) Direct and indirect costs or savings to those affected: Indirect and direct cost savings anticipated are that these qualified paramedics will not have to sit for the examination in Kentucky.

1. First year: Costs savings cannot be adequately calculated.

2. Continuing costs or savings: Cost savings cannot be adequately calculated.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Additional factors decreasing costs includes the ability to issue temporary certificates to qualified applicants allowing them to work pending final approval.

(b) Reporting and paperwork requirements: These reporting and paperwork requirements are expected to increase as the applicant must provide documentation of a number of requirements prior to certification being issued.

(2) Effects on the promulgating administrative body: This amended regulation will standardize the requirement for out-of-state applicants and make the board's job much less complicated.

(a) Direct and indirect costs or savings: Indirect savings include board staff will no longer have to investigate and research each out-of-sate applicant individually.

1. First year: Savings cannot be adequately calculated.

2. Continuing costs or savings: Savings cannot be adequately calculated, however, board expects the savings to continue yearly.

3. Additional factors increasing or decreasing costs: Not aware of any additional factors which would increase or decrease costs.

(b) Reporting and paperwork requirements: Reporting and paperwork are expected to increase initially as the board drafts new forms and applications.

(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, but rejected as the board and paramedic advisory committee felt that the standards for out-of-state applicants should be uniform to insure qualified paramedics from other states.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not aware of any statute, regulation or policy which is in conflict, overlaps or duplicated by this amended 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: Board and Paramedic Advisory Committee feel this amended regulation is needed to uniformily apply to out-of-state applicants and gives the authority to issue temporary certificates.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:141. Denial, revocation and suspension of certificate.

RELATES TO: KRS 311.650 to 311.658, 311.990(18)
STATUTORY AUTHORITY: KRS 311.654
NECESSITY AND FUNCTION: KRS 311.654 directs the [State] Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to establish procedures for taking disciplinary action against certified paramedics.

Section 1. Denial, Revocation, and Suspension of Certificates. The board may deny, revoke or suspend the certificate of any person who:

(1) Has engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

(2) Becomes a drug dependent person or drug abuser as defined in KRS 222.011(8);

(3) Becomes an alcoholic person who suffers

from alcoholism as defined in KRS 222.011(3);
(4) Develops such physical or mental disability or other condition that continued practice or performance of his duties may be dangerous to patients or the public; or
(5) Fails to comply with any regulation of the board relating to the certification of paramedics.
(6) Knowingly makes o presents, or causes to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other thing, in connection with an application for a certificate.
(7) Practiced, or aided or abetted in the practice of fraud, forgery, deception, collusion or conspiracy in connection with an examination for a certificate.
(8) Has been convicted, including a nolo contendere plea, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be a felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor, under such laws.
(9) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession.
(10) Knowingly employed, as a certified paramedic in the practice of his profession, in this state, any person not duly licensed or otherwise aided, assisted or abetted the unlawful practice of any healing art.
(11) Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any practice which regulates the functions of a paramedic or any regulation promulgated by the board under KRS 311.654 or any other valid regulation of the board.
(12) Violated any order of suspension, or the terms or conditions of any order of probation, issued by the board.
(13) Performed or attempted to perform as a certified paramedic under a false or assumed name or impersonated another paramedic of a like, similar or different name.
(14) Willfully violated a confidential communication except as required by a court of law.
(15) Had his/her certification to practice as a paramedic in another state, territory or foreign nation revoked, suspended, restricted or limited or has been subjected to other disciplinary action by the licensing authority thereof.
(16) Been removed, suspended or expelled by any professional medical association or society when such action was based upon what said association or society found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provision of KRS Chapter 311, or regulations promulgated by the board.
(17) Been disciplined by a medical director, approved advanced life support provider, physician coordinator or course coordinator including removal, suspension, limitation of privileges, failing to renew privileges for cause, or other disciplinary action if such action was based upon what said provider or medical director found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provisions of KRS Chapter 311, or any regulation promulgated by the board.

Section 2. Hearings. The board shall furnish the certificate holder with written notice setting out the substance of each offense charged with sufficient detail to reasonably apprise such person the nature, time and place thereof. The certificate holder shall have the right to be present in person or be represented by counsel and to present evidence and to be heard in opposition to the charges which may be instituted. The board shall make a finding of fact and conclusion of law. The hearing may be conducted by a hearing officer appointed by the board. Hearings must be conducted in accordance with 201 KAR 9:081.

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 23, 1990 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 January 18, 1990, 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 paramedics certified in the Commonwealth of Kentucky who commit acts in violation of the paramedic regulations.
(a) Direct and indirect costs or savings to those affected: Direct costs to those affected would include the cost of defending charges to the board.
1. First year: Costs cannot be adequately calculated.
2. Continuing costs or savings: Costs will depend solely on the number of paramedics who violate the regulations.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Disciplinary charges which are proven could result in suspension, revocation or restriction of certificates. Appeals from judgment of board could increase costs to paramedic.
(b) Reporting and paperwork requirements: Reporting and paperwork requirements would increase for the charged paramedics.
(2) Effects on the promulgating administrative body: The board's workload would increase with the added grounds for disciplinary action.

(a) Direct and indirect costs or savings: Direct costs to the board would include the cost of conducting investigations and hearings into charges of wrongdoing; some of these costs may be recouped by levying fines against the offenders.

1. First year: Costs cannot be adequately calculated.

2. Continuing costs or savings: Costs cannot be adequately calculated but it is felt that a substantial portion may be recouped by levying fines.

3. Additional factors increasing or decreasing costs: Not aware of additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Board's reporting and paperwork requirements increased by this regulation through investigations and hearings.

(3) Assessment of anticipated effect on state and local revenues: No impact anticipated on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative of leaving regulation as previously drafted was considered, however rejected as board and committee both felt that too many gaps existed in reasons for discipline.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not aware of any statute, regulation or policy which is in conflict, overlaps or is duplicated by this amended 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: Board and Paramedic Advisory Committee feels that this amended regulation sets out reasonable grounds for institution of disciplinary charges.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:151. Contracts for support services; establish a fee schedule; and establish a Paramedic Advisory Committee.

RELATES TO: KRS 311.650 to 311.658, 311.990(18)

STATUTORY AUTHORITY: KRS Chapter 13A, 311.654, 311.656

NECESSITY AND FUNCTION: KRS 311.654 directs the [State] Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to authorize contracts for support services; establish a fee schedule; and to establish a Paramedic Advisory Committee.

Section 1. Contract for Support Services. The board may contract with the Cabinet for Human Resources for [the selection of training sites, student selection, monitoring and evaluation of training courses of paramedics, and to perform such other] services as may be necessary to implement the provisions of these regulations, subject to the approval of the board.

Section 2. Fees. The following schedule of fees is established pursuant to KRS 311.656:

(1) Certification exam application fee: $10;

(2) Certification exam[ination] fee: $45;

(3) Certification exam [Renewal] fee: $35;

(4) Fee for duplicate certificate: $10;

(5) Training course application fee: $100 [50];

[(6) Advance life support provider application fee: $50;]

[(7) Annual renewal of ALS provider license: $50.]

(6) Certification exam retest fee: $30;

(7) Recertification exam retest fee: $15;

(8) Temporary certificate: $25.

Section 3. Paramedic Advisory Committee. (1) A Paramedic Advisory Committee appointed by the board will consist of the following members appointed for a term of three (3) years:

(a) Four (4) physicians [appointed for a term of three (3) years].

(b) One (1) emergency department nurse [for a term of three (3) years].

(c) Three (3) [One (1)] certified paramedics, one of which shall be an EMT instructor [appointed for a term of three (3) years].

(d) One (1) paramedic [EMT] instructor/coordinator [for a term of three (3) years].

[(e) One (1) member of the Emergency Medical Services Coordination Association for a term of two (2) years.]

(e) [(f)] One (1) advanced life support provider [for a term of two (2) years].

(f) [(g)] One (1) consumer [for a term of two (2) years].

(g) [(h)] The director of the EMS Branch of the Cabinet for Human Resources or his designee shall serve as an ex officio member.

(2) The duties of the committee shall be to advise the board on matters pertaining to paramedics.

Section 4. Attendance. Failure by any committee member to attend three (3) consecutive meetings may be cause for removal from the committee.

ROYCE E. DAWSON, M.D., President

APPROVED BY AGENCY: December 14, 1989

FILED WITH LRC: December 14, 1989 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 23, 1990 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 January 18, 1990, 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 paramedics certified in the Commonwealth of Kentucky, applicants for training course and members of Paramedic Advisory Committee.

(a) Direct and indirect costs or savings to those affected: Only increase costs are associated with application for training course. All other fees remain same, although retest and temporary certificate fees have been added.

1. First year: Costs cannot be adequately calculated.

2. Continuing costs or savings: Continued costs to applicants who fail testing procedures and to those paramedics requesting a temporary certificate.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Not aware of additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Increased reporting and paperwork requirements for those paramedics who fail the certification and recertification exams.

(2) Effects on the promulgating administrative body: Workload will be slightly increased in reviewing and acting on applications for training class and applications.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings are anticipated by the board.

1. First year: No costs or savings anticipated.

2. Continuing costs or savings: Continued costs or savings are not contemplated. Expected to remain at present level.

3. Additional factors increasing or decreasing costs: Not aware of any additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements will increase as more applications (certification, recertification and training class).

(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: Alternative considered was not requiring fees for training class applications, recertification and certification exams, but was rejected as not being cost-effective.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not aware of this amended regulation being in conflict, overlapping or duplicating any existing statute, regulation or policy.

(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 and Paramedic Advisory Committee feel this amended regulation allows the board to recoup the costs expended in administering the paramedic program and addresses the make-up of the committee.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:161. Skills, authorized procedures.

RELATES TO: KRS 311.650 to 311.658, 311.990(18)
STATUTORY AUTHORITY: KRS Chapter 13A, 311.654
NECESSITY AND FUNCTION: KRS 311.654 directs the [State] Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to prescribe procedures which certified paramedics, [graduate] paramedics graduates and paramedic trainees are authorized to perform.

Section 1. Authorized Certified Paramedic Procedures. Certified paramedics may perform the procedures and skills of a certified emergency medical technician (EMT). In addition, a certified paramedic may perform any of the procedures set forth in Section 3 of this regulation provided:

(1) A verbal order is given by radio or telephone by the medical director [advisor] or supervising physician (or a direct verbal or written order is given by a licensed physician who is physically present at the scene of the emergency call and who has been approved by the medical director or supervising physician to administer orders to the paramedic); and

(2) Provided, further that the certified paramedic is under the supervision of the medical director [advisor] or the supervising physician during the performance of authorized treatment and procedures. In addition, a certified paramedic may perform treatment and procedures pursuant to written standing orders issued by his medical director [advisor].

Section 2. Authorized [Graduate] Paramedic Graduate and Paramedic Trainee Procedures. [Graduate] Paramedic[s] graduates and paramedic trainees may perform the procedures and skills of a certified emergency medical technician (EMT). In addition, [graduate] paramedic[s] graduates and paramedic trainees may, subject to any limitations imposed by the medical director [advisor] or the supervising physician, perform any other procedures specified in Section 3 of this regulation, provided:

(1) Verbal order is given by radio or telephone by the medical director [advisor] or supervising physician (or a direct verbal or written order given by a licensed physician who is physically present at the scene of the emergency call[;] and who has been approved by the medical director or supervising physician to administer orders to the paramedic), or treatment and procedures performed pursuant to written standing orders issued by the medical director.

(2) Provided further that the [graduate] paramedic graduate or paramedic trainee is under the direct supervision of the medical director [advisor] or the supervising physician or registered nurse or certified paramedic directing the performance of such authorized procedures during didatic, clinical or internship, and as authorized by the medical director.

Section 3. Authorized Procedures. Any certified paramedic, [graduate] paramedic graduate or paramedic trainee, subject to the

limitations of this regulation may perform the following procedures as approved by the medical director:
(1) Suctioning: nasopharyngeal and endotracheal;
(2) Endotracheal and nasotracheal intubation;
(3) Insert oral and/or nasopharyngeal airway(s);
(4) Defibrillation/cardioversion or external cardiac pacing;
(5) Venipuncture and drawing venous blood for analysis;
(6) Upon proper approval by applicable licensing and regulator authorities possess and administer by the appropriate route (sublingually, orally, intravenously (more specifically limited to periphrial, femoral or external jugular), subcutaneously, endotracheally, intraosseous, or intramuscularly) the following classes of drugs or fluids:
(a) Anticonvulsant(s);
(b) Antiarrythmics [agents];
(c) Bronchodilators, also by nebulizer;
(d) Narcotics;
(e) Narcotic antagonists;
(f) Intravenous fluids or plasma expanders[, or both];
(g) Diuretics;
(h) Antihistamine;
(i) Vasoactives [drugs];
(j) Poison antidotes;
(k) Cardiotonics [drugs];
(l) Alkalizers [Alkalizing drugs];
(m) Vagolytics;
(n) Antihypoglycemics [agents];
(o) Antiemetics;
(p) [(o)] Or such other fluids, drugs, or medications subject to review and authorization by the board [as the board may prescribe].
(7) Perform nasogastric intubation and suctioning;
(8) Perform urinary catheterization and urine collection;
(9) Perform electrocardiographic monitoring and biomedical telemetry;
[(10) Utilize rotating tourniquets;]
[(11) Apply "antishock" trousers;]
[(12) Administer "breathing treatments" to patients experiencing COPD/asthmatic problems through the use of nebulizer with Brethine or Bronkosal medications.]
(10) [(13)] Conduct such physical assessments [examinations] for which they have been trained in the DOT curriculum; [and]
(11) Needle cricothyrotomy;
(12) Needle chest decompression;
(13) [(14)] Perform such other procedures subject to review and authorization by [as] the board [may prescribe].

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 23, 1990 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 January 18, 1990, 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 paramedics certified to practice in the Commonwealth of Kentucky (including paramedic trainees).
(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings to those affected are anticipated.
1. First year: None anticipated.
2. Continuing costs or savings: None anticipated.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Not aware of any additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: Reporting and paperwork requirements could increase as skills and authorized procedures increase by the need to document such activities.
(2) Effects on the promulgating administrative body: Expanded skills will require board to more closely monitor its paramedics.
(a) Direct and indirect costs or savings: Indirect costs will increase as increased scrutiny and supervision of paramedics by board will be required.
1. First year: Cannot be adequately calculated.
2. Continuing costs or savings: Cannot be adequately calculated.
3. Additional factors increasing or decreasing costs: Not aware of any additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: Reporting and paperwork requirements could increase as the board must scrutinize the paramedics expanded activities.
(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, but these new expanded skills and procedures are ones in which paramedics have been adequately trained and will add to the quality of healthcare received by Kentuckians.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not aware of any statute, administrative regulation or policy which is in conflict, overlaps or duplicated by this amended 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: These additional skills and procedures are ones

in which the paramedic has received extensive training and is always acting under physician direction and guidance.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:171. Utilization of services.

RELATES TO: KRS 311.650 to 311.658, 311.990(18)
STATUTORY AUTHORITY: KRS 311.654
NECESSITY AND FUNCTION: KRS 311.654 directs the [State] Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to establish minimum requirements relating to providers utilizing the services of certified paramedics, [graduate] paramedic[s] graduates, and paramedic trainees.

Section 1. Prohibition or Usage of Unauthorized Person. No provider shall employ, utilize, permit the operation of, or advertise or represent that said provider employs or utilizes certified paramedics, paramedic graduates, or paramedic trainees unless the provider is approved as an advance life support provider in the Commonwealth of Kentucky.

(1) Prohibited utilization of certified paramedics. Paramedics shall render services subject to the limitations established under KRS 311.658. [Utilization of Paramedic Personnel. No provider shall utilize the services of a certified paramedic, graduate paramedic, or paramedic trainee, except in accordance with the provisions of this regulation.]

Section 2. Medical Director [Advisor]. (1) A provider shall have a written agreement with the medical director [advisor] to provide medical supervision and control of paramedics in the employ of the provider. [The scope of the medical advisor's duties shall be set forth in a written contract with a provider.]

(2) The paramedic is granted the authority to perform skills, procedures, and techniques as outlined by the medical director under the authority of the license of the medical director and subject to the limitations set forth in 201 KAR 9:161, Section 3.

(3) The medical director may, at his discretion, suspend, limit, or terminate a paramedic's authority to perform skills, procedures, or techniques by notification to the paramedic's provider in writing of such intent.

(4) In cases regarding medical control, the medical director shall have the authority to exercise reasonable demands of the approved advanced life support provider in order to maintain a level of care as is acceptable to the medical director.

(5) The supervising physician may temporarily act on behalf of the medical director in his absence.

(6) Recommendations for qualifications of the medical director:

(a) Familiarity with the design and operation of prehospital EMS systems;

(b) Experience in prehospital emergency care of the acutely ill or injured patient;

(c) Routine participation in base station radio control of prehospital emergency units;

(d) Experience in emergency management of the acutely ill or injured patient;

(e) Routine active participation in emergency management of the acutely ill or injured patient;

(f) Active involvement in the training or continuing education of basic and advanced life support prehospital personnel;

(g) Active involvement in the medical audit review and critique of basic life support and advanced life support prehospital personnel;

(h) Participation in the administrative and legislative process effecting the regional or state prehospital EMS system, as available; and

(i) In addition, it is strongly recommended that the medical director be board certified in a primary care specialty (family practice, general surgery, internal medicine or emergency medicine). If the physician utilized as the medical director does not currently possess board certification, it is strongly recommended that efforts be made to obtain such.

Section 3. Medical Consultation, Transportation and Communication Requirements. (1) The provider that employs or utilizes certified paramedics must insure the availability of medical consultation of said paramedics twenty-four (24) hours a day, seven (7) days a week; and

(2) The provider must have available in the patient transport vehicle two-way radio capability which will enable medical consultation between the paramedic and the medical director or supervising physician during the transport of the patient; and

(3) This hospital must minimally have two-way radio voice communication capabilities with the provider's certified paramedics, paramedic graduates or paramedic trainees during patient transport. [Hospital Requirements. The hospital designated as resource hospital or base hospital responsible for supervising paramedics shall have an emergency room staffed with licensed physicians present in the emergency room twenty-four (24) hours a day who have agreed to supervise the provider's certified paramedics, graduate paramedics, or paramedic trainees. The hospital shall have two (2) way radio voice communication capability with the provider's certified paramedic, graduate paramedic, or paramedic trainee.]

Section 4. Recording of Verbal Orders. The provider shall record on magnetic tape all verbal orders other than those issued by a physician physically present at the scene of an emergency and any biomedical telemetry received by the hospital. All such recordings shall be retained in a permanent file for a minimum of one (1) year and for such additional time as is deemed appropriate based upon all relevant factors by the provider.

Section 5. Staffing of Advanced Life Support Units. All advanced life support units used by a provider shall as a minimum be staffed by at least:

(1) One (1) certified paramedic, or physician, and one (1) registered nurse, or [graduate] paramedic graduate, or paramedic trainee or emergency medical technician; or

(2) One (1) [graduate] paramedic graduate or paramedic trainee, and one (1) physician, or registered nurse or certified paramedic.

(3) Each ground based prehospital advanced

life support provider must staff each unit with a certified paramedic.

(4) The advanced life support provider will minimally provide one (1) appropriately staffed advanced life support unit on a twenty-four (24) hour a day basis. This staffing requirement may be met through the use of a call-back system. Personnel utilized on a call-back system must be available within ten (10) minutes. Advance life support providers may be granted a waiver of the twenty-four (24) hour staffing requirement subject to review and approval by the paramedic regulatory authority.

(5) Nothing in this regulation shall be construed to allow a paramedic trainee or paramedic graduate to solely staff the patient compartment of an ambulance during transport of a patient on which advanced life support procedures have been or are being performed. In addition, a physician, registered nurse, or certified paramedic must be physically present in the patient compartment supervising the paramedic trainee or paramedic graduate.

Section 6. Motor Vehicles and Aircraft Used by Advanced Life Support Units. All motor vehicles used by a provider for advanced life support for patient transportation shall meet the minimum requirements of 902 KAR 20:115. All aircraft used by a provider for advanced life support for patient transportation shall meet the minimum requirements of 902 KAR 20:155 [Federal GSA Standards, KKK-A-1822].

Section 7. Advanced Life Support Equipment and Supplies. The provider shall provide and maintain in fully operable condition on each advanced life support unit as a minimum all equipment required for ground [conforming] ambulances pursuant to 902 KAR 20:115, aircraft pursuant to 902 KAR 20:155 and, in addition, the following equipment and supplies:

(1) An endotracheal intubation set consisting of:

(a) Laryngoscope handle;

(b) Laryngoscope blades, curved and straight in adult and pediatric sizes;

(c) Extra batteries and light bulb for laryngoscope;

(d) Endotracheal tubes, for orotracheal and nasotracheal intubation, with appropriate sizes for adult and pediatric use;

(e) Magill's [McGill's] forceps; with appropriate sizes for adult and pediatric use;

[(f) Hemostats;]

[(g) Syringes (5cc);]

(f) [(h)] One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;

(g) [(i)] Water soluble lubricant suitable for lubrication of endotracheal and nasopharyngeal tubes;

(h) [(j)] Bite block;

(i) [(k)] Nasopharyngeal airways in sizes suitable for adult [and pediatric] usage;

(2) A portable monitor-defibrillator which:

(a) Is capable of displaying a visual display of cardiac electrical activity;

(b) Is capable of providing a hard copy of cardiac electrical activity measure;

(c) Is capable of delivering [up to 320 watt/seconds] direct current energy over a variable range suitable for pediatric and adult usage;

(d) Has a pair of external paddle electrodes capable of utilization for immediate monitoring of heart activity and delivery of countershock in both the adult and pediatric patient;

(e) Is capable of being operated from internal rechargeable batteries[, with appropriate accessory for recharging battery];

(f) [Preferably, but not necessarily,] Has synchronized countershock capability for cardioversion, (all equipment purchased after the effective date of this regulation must meet this requirement;

(g) Has a patient monitoring cable; and

(h) Has accessories: electrode paste, gel, or equivalent; electrode pads, or equivalent for use with patient cable; one (1) additional roll of paper for hard-copy printout.

(3) Needles, sterile, disposable: minimum of three (3) sizes must be maintained, eighteen (18) to twenty-five (25) gauge as required by local written protocol [20 gauge, 1 inch and 1' inch; 22 gauge, 1' inch; 23 gauge, 1 inch; 25 gauge, 1 inch];

(4) Syringes, disposable: minimum of three (3) sizes must be maintained 1cc to 30cc as required by local written protocol [1 cc tuberculin, 3 cc, 5 cc, 10cc, 20cc, 50cc];

(5) Appropriate containers for collection of blood samples as required by local written protocol;

(6) Tourniquet appropriate for use with venipuncture procedure;

(7) Dextrostix(R) or equivalent for measurement of blood sugar;

(8) Disposable, individually packaged antiseptic wipes;

[(9) Pole suitable for attachment to ambulance cot for hanging intravenous fluids;]

(9) [(10)] Intravenous fluids: five (5) percent dextrose in water; [500cc containers;] lactated ringers, or therapeutic equivalent, 1,000 cc containers; normal saline for infusion[, 1,000cc containers];

(10) [(11)] Intravenous fluid administration sets and extension sets: macrodrip and microdrip [regular 15gtt/cc; microdrip 60gtt/cc];

(11) [(12)] Intravenous catheter over needle devices: twelve (12) to twenty-four (24) gauge as required by local written protocol [15 gauge, 16 gauge, 18 gauge, 20 gauge];

(12) [(13)] Butterfly needles: 19 gauge, 23 gauge;

(13) [(14)] Nasogastric tubes: ten (10) to eighteen (18) French as required by local written protocol, 50cc bulb syringe or 60cc catheter tipped syringe or equivalent [10 French, 14 French, 18 French];

(14) [(15)] Water soluble lubricant;

(15) [(16)] Portable suction apparatus;

(16) [(17)] Sterile suction catheters: ten (10) to eighteen (18) French as required by local written protocol [10 French, 14 French, 18 French];

[(18) Rotating tourniquet apparatus: three (3) elastic bands of two (2) inch or greater;]

(17) [(19)] Stethoscope, and flashlight, and aneroid manometer, or sphygmomanometer, in appropriate adult and pediatric sizes [and flashlight];

(18) Infant or neonate suction apparatus;

(19) Contamination/isolation equipment consisting of minimally:

(a) Assorted sizes gloves;

(b) Surgical mask or equivalent;

(c) Eye protection;

(d) Gown; and

(e) Plastic bags for contaminated equipment or

materials.
(20) Appropriate puncture-resistant container for disposal of sharp objects.

Section 8. Additional Equipment on Advanced Life Support Units. The provider shall provide and maintain on each advanced life support unit such additional equipment as the board may deem essential.

Section 9. Availability of Equipment. All equipment and supplies specified in this regulation shall be immediately available at all times to the certified paramedic, [graduate] paramedic graduate, or paramedic trainee when he is engaged in patient care. Where the vehicle used for advanced life support is not the vehicle that will provide the patient transportation and where a complete set of equipment is not available in the patient transportation vehicle, the advanced life support units shall accompany the patient transportation unit at all times when the patient being cared for by a certified paramedic, [graduate] paramedic graduate, or paramedic trainee is being transported in the patient transportation vehicle.

Section 10. Neonatal Isolettes. The provider shall have at least one (1) neonatal transportation isolette available for use on the [his] patient transportation vehicles. This may be fulfilled by contractual arrangements with local hospitals.

Section 11. Limitation of Paramedic Services; Emergency Situations. In the event advanced life support equipment and supplies are not available, a certified paramedic, [graduate] paramedic graduate, or paramedic trainee shall perform only those services which a certified emergency medical technician shall perform. Provided, however, that this restriction shall not apply in emergency situations where a physician orders the use of advanced life support equipment and techniques after the certified paramedic, [graduate] paramedic graduate, or paramedic trainee has apprised the physician as to which procedures he is unable to perform due to equipment unavailability or breakdown of equipment.

[Section 12. Annual Evaluation. The provider and the provider's medical advisor shall provide an annual written evaluation on each certified paramedic, graduate paramedic or paramedic trainee to the committee.]

Section 12. [13.] Utilization of Paramedic Personnel by Training Institutions. Any training institution conducting a paramedic training course authorized and approved by the board may utilize a certified paramedic; [graduate paramedic, or paramedic trainee] provided that:
(1) Utilization of the certified paramedic, [graduate paramedic, or paramedic trainee] is approved by the physician coordinator [medical advisor] and the board; and
(2) The certified paramedic's, [graduate] paramedic, or paramedic trainee's] primary responsibilities and duties are in the training of paramedic personnel.

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: December 14, 1989

FILED WITH LRC: December 14, 1989 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 23, 1990 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 January 18, 1990, 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: Those providers utilizing the services of certified paramedics, paramedic graduates and paramedic trainees.
(a) Direct and indirect costs or savings to those affected: Direct costs to the providers are anticipated to be increased because stricter requirements which call for more and closer supervision.
1. First year: Costs cannot be adequately calculated.
2. Continuing costs or savings: Costs are expected to increase until such time as the provider can get a steady operation on-line.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Recruiting qualified medical personnel to supervise and work with paramedics will initially increase costs.
(b) Reporting and paperwork requirements: Reporting and paperwork requirements are expected to increase as the mdical directors and providers duties and responsibilities are expanded.
(2) Effects on the promulgating administrative body: The amended regulation is expected to relieve the board and Paramedic Advisory Committee of interpreting regulation as utilization is specifically spelled out in this new regulation.
(a) Direct and indirect costs or savings: Indirect cost savings are expected in board staff time and workload expended on paramedic activities.
1. First year: Savings cannot be adequately calculated.
2. Continuing costs or savings: While it is expected that savings will continue year to year, these savings cannot be adequately calculated.
3. Additional factors increasing or decreasing costs: Not aware of any additional factors which would increase or decrease costs.
(b) Reporting and paperwork requirements: Reporting and paperwork requirements are

expected to decrease by specifically setting out how paramedics can be utilized.

(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: In the old regulation, utilization of skills was not adequately addressed or explained, but new amended regulation states with specificity how the paramedic can be utilized.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not aware that this amended regulation is in conflict, overlaps or is duplicated by any statute, regulation or policy.

(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 and Paramedic Advisory Committee feel that this amended regulation is needed because it advises all providers with particulars how they can utilize paramedics. No longer is guesswork needed.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky State Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:175. Physician assistants; certification and supervision.

RELATES TO: KRS 311.530 to 311.620, 311.990

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: It is the purpose of this regulation to promote the efficient and effective utilization of the skills of physicians by allowing them to delegate health care tasks to qualified physician assistants and in so doing, promote, sustain and enhance the health and welfare of the people of the Commonwealth.

Section 1. Definitions. As used in this regulation:

(1) "Physician assistant" means a person who has successfully completed an approved program and an approved examination, and who is certified by the board to assist a registered physician in the provision of medical care under the physician's supervision; the physician assistant is not an independent practitioner of the healing arts but only an adjunct to his or her supervising physician;

(2) "Anesthesia (or anesthesiology) assistant" means a physician assistant who assists in the provision of general or regional anesthesia;

(3) "Board" means the Kentucky Board of Medical Licensure;

(4) "Supervising physician" means a physician currently licensed to practice medicine in the Commonwealth who has been approved by the board to supervise physician assistants for whom the supervising physician takes responsibility;

(5) "Advisory committee" means the committee appointed by the board to advise the board on all matters related to physician assistants;

(6) "Approved program" means a program for the education and training of physician assistants which meets standards acceptable to the board;

(7) "Supervision" means control and direction of the services of physician assistants by their supervising physicians;

(8) "Approved examination" means an examination to test the knowledge and skills of physician assistants which meets standards acceptable to the board;

(9) "Certificate" means the board's official documentary authorization allowing a physician assistant to practice in the Commonwealth for the time specified; and

(10) "Trainee" means a person who is currently enrolled in an approved program for the training of physician assistants.

Section 2. Certification of Physician Assistants. (1) To be certified by the board as a physician assistant, a person must:

(a) Submit a completed application with the required fee;

(b) Be of good character and reputation;

(c) Be a graduate of an approved program;

(d) Have passed an examination approved by the board within three (3) attempts.

(2) If grounds for denial of certification do not exist, a temporary certificate may be issued to a physician assistant after graduation from an approved program. The holder of a temporary certificate shall take the first available approved examination after graduation. If the holder receives a passing score on this examination, the temporary certificate shall be effective until the board approves the holder for permanent certification. If the holder receives a failing score, the temporary certificate shall automatically expire.

(3) Physician assistants duly authorized to practice in other states and in good standing may apply for certification by endorsement from the state of their original certification if the endorsing state has standards substantially equivalent to those of the Commonwealth.

(4) Certification shall be renewed [on or before July 1, 1989, and thereafter] biennially according to the procedure established by the executive director. In conjunction with the renewal of his/her certification, the physician assistant shall provide evidence of having completed in the previous two (2) years a minimum of 100 hours of continuing education accepted by the National Commission on Certification of Physician Assistants or the American Medical Association. <u>In addition to this, all physician assistants must recertify every six (6) years as required by the NCCPA, unless they are not eligible because they hold a special physician assistant certification approved by the Kentucky Board of Medical Licensure.</u>

Section 3. Approved Examination. The following examinations are approved by the board:

(1) The examination of the National Commission on Certification of Physician Assistants.

(2) The official certification examination of any state if the board determines the examination to be an adequate measure of physician assistant competency.

(3) Any other formally administered examination if the board determines, upon review of proof provided by the applicant, that the examination is substantially equivalent to the examination of the National Commission on Certification of Physician Assistants.

Section 4. Approved Programs. (1) The following programs are approved by the board:

(a) Programs that are accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association (CAHEA) and that provide [interdisciplinary] training in at least the following areas: family medicine, internal medicine, surgery, pediatrics, psychiatry, and obstetrics/gynecology; and

(b) Any other training program if the board determines, upon review of proof submitted by the applicant, that the training received was substantially equivalent to that received in a program as described in paragraph (a) of this subsection.

(2) Programs specifically designed to train the individual to assist in the provision of general or regional anesthesia must be accredited by CAHEA.

(3) Trainees [enrolled in approved programs] shall be under the supervision of the program which shall be responsible for their services. Trainees shall be bound by the same practice limitations imposed upon physician assistants generally, but will not be considered to be practicing without authorization while enrolled in the program.

Section 5. Physician Assistant Scope of Practice. (1) A physician assistant may perform any and all medical services that are within the scope of training received in an approved program and which are also within the scope of the supervising physician's practice [as designated by the specialty code in the most current revision of the Kentucky Medical Directory]. The physician assistant shall not make a definitive diagnosis or prescribe or apply [employ] any treatment modality without physician supervision. [independent of the supervising physician. However,] A physician assistant may[, without specific approval,] initiate evaluation and treatment in emergency situations without physician supervision.

(2) A physician assistant shall not administer or monitor general or regional anesthesia unless such individual satisfies the applicable requirements of Section 6 of this regulation.

(3) A physician assistant may render services in the offices or clinics of the supervising physician, or in hospitals and other licensed health care facilities. However, physician assistants shall not render services in these facilities without the express written permission of the respective facility's governing body. The facility may restrict the physician assistant's scope of practice within the facility as the facility deems appropriate.

(4) Neither the physician assistant nor the supervising physician shall require any individual or entity to perform any act relative to the provision of services by the physician assistant that the individual or entity is specifically forbidden to perform pursuant to duly promulgated law.

Section 6. Physician Assistants Practicing as Anesthesia (or Anesthesiology) Assistants. (1) Any physician assistant practicing as an anesthesia (or anesthesiology) assistant in Kentucky prior to July 15, 1986 may continue to so practice provided:

(a) That such individual has complied with all the practice requirements and conditions of Sections 2, 3, 4(2), and 5 of this regulation;

(b) That such individual is a graduate of a program specifically designed to train the individual to administer general or regional anesthesia which is accredited by CAHEA;

(c) That such individual is only employed by a supervising physician who has postgraduate training in anesthesiology from an anesthesiology program accredited by the Accreditation Council for Graduate Medical Education (ACGME); and

(d) Notwithstanding Section 9 of this regulation, such individual shall not administer or monitor general or regional anesthesia unless his or her supervising physician is physically present in the operating room during induction, and thereafter physically present in the operating suite and not concurrently performing any other anesthesia procedure which would prevent the supervising physician's immediate physical presence in the operating room where the anesthesia procedure is being performed.

(2) Any physician assistant not already practicing as an anesthesia (or anesthesiology) assistant in Kentucky prior to July 15, 1986 must meet the following requirements:

(a) Such individual shall be a graduate of an approved program as defined in Section 4(1)(a) of this regulation which is of four (4) years duration, and, in addition to such training, be a graduate of a two (2) year program specifically designed to train the individual to assist in the provision of general and regional anesthesia, which consists of specialized academic and clinical training in anesthesia, and which is accredited by CAHEA;

(b) Such individual shall have complied with all of the practice requirements and conditions of Sections 2, 3, 4, and 5 of this regulation;

(c) Such individual shall only be employed by a supervising physician who is a board certified anesthesiologist; and

(d) Notwithstanding Section 9 of this regulation, such individual shall not administer or monitor general or regional anesthesia unless his or her supervising physician[, who must be a board certified anesthesiologist,] is physically present in the operating room during induction and emergence, and thereafter physically present in the operating suite and not concurrently performing any other clinical procedure.

Section 7. Approval of Supervising Physicians. (1) To seek approval by the board as a supervising physician, a physician must:

(a) Be a current[ly] fully licensed physician in good standing and primarily practicing in the Commonwealth;

(b) Submit a completed application with the required fee.

(2) In addition to other information the board's executive director may deem appropriate, the supervising physician shall, briefly, on the face of the application:

(a) Describe the nature of his/her practice;

(b) Describe the responsibilities the physician wishes the physician assistant to assume;

(c) Describe the means by which the physician will maintain a line of communication with the physician assistant when the two (2) are not in the same location; and

(d) Denote the name, address and area of practice of one (1) or more alternate physicians who agree in writing to accept the

responsibility of supervising the physician assistant in the supervising physician's absence.

(3) A physician shall not supervise a physician assistant without being approved by the board. The board may impose restrictions on the scope of practice of a particular physician assistant or on the methods of supervision employed by the supervising physician as it deems appropriate. Physicians must obtain specific approval for each physician assistant they wish to supervise and the board will not approve any physician to supervise more than two (2) physician assistants at any one (1) time.

Section 8. Duties of Supervising Physicians. A supervising physician shall:

(1) Restrict the services provided by the physician assistant the physician supervises to those services within the limitations of the physician assistant's scope of practice as set forth in Section 5 of this regulation and, as applicable, Section 6 of this regulation, and as may be specifically limited by the board;

(2) Prohibit physician assistants from independently prescribing or dispensing controlled substances or other legend drugs;

(3) Be responsible for assuring that the professional status of the physician assistant is properly identified to all patients to whom the physician assistant provides service [Inform all patients with whom the physician assistant comes in contact of the status of the physician assistant];

(4) Post a notice in all offices or clinics where the physician assistant may practice stating that a physician assistant practices on the premises;

(5) Require physician assistants to wear a name tag or other identification clearly stating that the person is a "physician assistant - certified";

(6) Prohibit the physician assistant from independently billing any patient or other payor for services rendered by the physician assistant;

(7) Negotiate with the medical staff and/or governing body of any hospital, long-term care facility or institution to establish [and limit] the scope of practice of the physician assistant;

(8) Not require a physician assistant to perform services or other acts that the physician assistant feels incapable of carrying out safely and properly;

(9) Survey critically and biennially the performance of the physician assistant under the physician's supervision as to reliability, accountability, fund of medical knowledge and recommend to the committee, approval or disapproval of the [other] physician assistant's certification[, including evidence of continuing certification by the National Commission on Certification of Physician Assistants]. This critical survey process shall be performed by the supervising physician biennially on the date of the physician assistant's original certification in the Commonwealth of Kentucky;

[(10) Submit in conjunction with the physician assistant's renewal of certification a statement evidencing the physician assistant's completion of a minimum of 100 hours of continuing education as set forth in Section 2(4) of this regulation;]

(10) [(11)] Maintain adequate, active and continuous supervision of the physician assistant's activities to assure the physician assistant is performing as directed and in compliance with these regulations. Proper and adequate records shall be kept reflecting services assigned to and performed by a physician assistant and the supervising physician will be held responsible for activities performed by his/her physician assistant [The supervising physician shall timely sign all records of services rendered by the physician assistant as certification that the physician assistant carried out the services as delegated];

(11) [(12)] Notify the board within three (3) business days if the physician assistant ceases to be under the control or in the employ of the supervising physician; and

(12) [(13)] Notify the board within twenty (20) days if the supervising physician believes in good faith that the physician assistant has violated any disciplinary rule set forth in this regulation.

Section 9. Supervision and Satellite Clinics. (1) The supervising physician need not be physically present at all times when the physician assistant is providing services in the physician's office or clinic so long as the physician assistant has a reliable means of having direct communication with the supervising physician at all times. Except as may be provided by this regulation or the board, the supervising physician need not be present in a hospital or other licensed health care facility while the physician assistant is providing services so long as the physician assistant has a reliable means of having direct communication with the supervising physician at all times, and the facility has given specific approval for the provision of the given services by the physician assistant without the presence of the supervising physician.

(2) Any supervising physician utilizing the services of a physician assistant in an office or clinic separate and apart from the physician's primary office shall submit a specific written request to the board delineating the services to be provided by the physician assistant, the distance between the primary office and the setting in which the physician assistant is to practice and the mechanism by which the physician assistant shall have access to direct communication with the supervising physician at all times. The board may approve or disapprove such requests as it deems appropriate and may approve a request with specified limitations. Under no circumstances shall a physician assistant practice in such a setting without first having two (2) continuous years of experience in a nonsatellite setting.

Section 10. Discipline of Physician Assistants. The board may revoke, suspend, deny, decline to renew, limit or restrict the certificate of a physician assistant, or may reprimand or place a physician assistant on probation for no more than five (5) years under conditions the board deems appropriate, upon proof that the physician assistant has:

(1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other document in connection with an application for certification;

(2) Practiced, or aided or abetted in the practice, of fraud, forgery, deception, collusion or conspiracy in connection with an

examination for certification;
(3) Been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be, a felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor under such laws;
(4) Become addicted to or an abuser of alcohol, drugs or any illegal substance;
(5) Developed such physical or mental disability or other condition that continued practice presents a danger to patients, the public or other health care personnel;
(6) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his/her profession;
(7) Practiced as a physician assistant outside the practice of the designated supervising physician;
(8) Aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art, including the practice of physician assistants;
(9) Willfully violated a confidential communication;
(10) Had a physician assistant certificate of any other state, territory, or foreign nation revoked, suspended, restricted, limited or subject to other disciplinary action;
(11) Performed the services of a physician assistant in an unprofessional, incompetent, grossly negligent or chronically negligent manner;
(12) Exceeded the authority delegated by the supervising physician;
(13) Exceeded the scope of practice duly established by the governing authority of any hospital or other licensed health care facility;
(14) Been removed, suspended, expelled or placed on probation by any health care facility or professional society for what was found to be unprofessional conduct, incompetence, negligence or violation of any provision of this regulation;
(15) Violated any applicable provision of regulations regarding physician assistant practice;
(16) Violated any term of probation or other discipline imposed by the board;
(17) Failed to complete the required number of hours of approved continuing education; or
(18) Performed any act as a physician assistant without having a designated supervising physician.

Section 11. Discipline of Supervising Physicians. Failure of a physician to obtain approval as a supervising physician, or failure of a supervising physician to observe applicable responsibilities established by regulations promulgated by the board regarding physician assistants, shall be considered unprofessional conduct and the physician may be proceeded against pursuant to the board's rules regarding physician discipline. In addition to other discipline, the board may revoke, suspend, restrict, or place on probation the supervising physician's right to supervise a physician assistant.

Section 12. Physician Assistant Advisory Committee. (1) The board shall establish a physician assistant advisory committee consisting of nine (9) members, four (4) of whom shall be physician assistants from (as practicable) differen regions of the Commonwealth, two (2) supervising physicians, one (1) resident of the Commonwealth who is not associated with or financially interested in the health care business, one (1) advanced registered nurse practitioner who shall be selected from a list of three (3) nominees submitted by the Kentucky Board of Nursing and who shall be licensed in good standing in the Commonwealth, and one (1) member of the board. The members of the committee shall hold office for terms of three (3) years and until their successors are appointed and qualified, except that the terms of office of the members first appointed shall be as follows: two (2) members shall be appointed for one (1) year, four (4) members shall be appointed for two (2) years and three (3) members shall be appointed for three (3) years. The terms of all members of the committee shall expire on August 31st of the last year of their respective terms.
(2) The committee shall hold meetings at least semiannually and more often as necessary, to review and make recommendations to the board regarding:
(a) Applications of physician assistants and supervising physicians;
(b) Statutes and regulations; and
(c) Any other matter relating to the practice of physician assistants.
(3) The committee shall review all grievances relating to physician assistants. The board's investigational powers relating to physicians shall apply equally to physician assistants. Upon review of any grievance, the committee shall make a recommendation to the appropriate inquiry panel. Disciplinary proceedings against physician assistants shall be conducted in the same manner as proceedings against physicians and physician assistants shall have the same right to judicial review enjoyed by physicians. The board may temporarily suspend or restrict a physician assistant's certification during the pendency of a proceeding and may order a physician assistant to undergo physical or mental examination in accordance with the procedures set forth in KRS 311.592 and KRS 311.599, respectively.

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 23, 1990 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 January 18, 1990, 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 physician assistants certified to practice in Kentucky except those holding special certification as provided by this board.
(a) Direct and indirect costs or savings to those affected: There will be no direct or indirect costs or savings to the physician assistants.
1. First year: No costs or savings.
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 and paperwork requirements.
(2) Effects on the promulgating administrative body: The regulation clarifies and makes easier and more efficient the certification and supervision of physician assistants.
(a) Direct and indirect costs or savings: No indirect costs or savings to the board.
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.
(3) Assessment of anticipated effect on state and local revenues: No contemplated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives considered, specifically leaving the regulation in its present form, but the board decided to clarify the areas of concern to make the regulation easier to enforce.
(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 these clarifications needed to insure the public that physician asistants are qualified and supervised.
TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.011(5), 314.111(1)
STATUTORY AUTHORITY: KRS Chapter 314
NECESSITY AND FUNCTION: It is necessary to establish standards for faculty of programs of nursing which prepare graduates for licensure as registered nurses or practical nurses.

Section 1. Faculty for Prelicensure Registered Nurse Programs. (1) Number and composition. The faculty shall include but not be limited to a nurse administrator and faculty in the major areas of clinical nursing practice.
(a) The faculty shall be adequate in number and composition to plan and to implement the curriculum of the program in relation to its stated purpose, philosophy, objectives, and number and size of student classes admitted annually, and any additional extension, experimental or continuing education programs.
(b) The faculty shall be adequate in number to provide for the supervision of students in the clinical practice experience as stated in Section 1(3) of 201 KAR 20:260.
(2) Nurse administrator qualifications:
(a) A minimum of a masters or higher degree in nursing if appointed after September 1, 1980.
(b) A minimum of five (5) years of nursing experience within the immediate past ten (10) years and experience in administration.
(c) Current license to practice as a registered nurse in the Commonwealth of Kentucky.
(3) Nurse faculty qualifications:
(a) After September 1, 1985, at least three-fourths (3/4) of the nurse faculty members including full-time equivalents in all educational programs whose faculty prepares students for licensure as registered nurses shall have a minimum of a masters degree in nursing. A program of nursing may include as part of the three-fourths (3/4) of nursing faculty with masters degrees, those nurse faculty members employed prior to September 1, 1980 who have a baccalaureate degree in nursing and a masters degree in a related field.
(b) After January 1, 1992 [1990], new nurse faculty appointees shall hold a masters or higher degree in nursing.
(c) Current license to practice as a registered nurse in the Commonwealth of Kentucky.
(d) Experience in the clinical or functional area of responsibility or both with a minimum of two (2) years nursing experience within the immediate past five (5) years.
(e) Experience in the application of principles in teaching and learning.

Section 2. Faculty for Prelicensure Practical Nurse Programs. (1) Number and composition. The faculty shall include but not be limited to a nurse administrator and faculty in the major areas of clinical nursing practice.
(a) The faculty shall be adequate in number and composition to plan and to implement the curriculum in relation to its stated purpose, philosophy, objectives, and number and size of student classes admitted annually.
(b) All nurse faculty members shall be appointed by and be responsible to the governing institution of the programs of nursing.
(c) There shall be a minimum of two (2) full-time nurse faculty members employed. The faculty shall be adequate in number to provide for the supervision of students in the clinical practice experience as stated in Section 1(3) of 201 KAR 20:260.
(2) Nurse administrator qualifications:
(a) A bachelor of science degree in nursing if appointed after July 1, 1980.

(b) A minimum of five (5) years of nursing experience within the past ten (10) years with experience in administration.
(c) Current licensure to practice as a registered nurse in the Commonwealth of Kentucky.
(3) Nurse faculty qualifications:
(a) New faculty employed after September 1, 1985 shall have earned a minimum of a baccalaureate degree by January 1, 1992 [1990].
(b) After January 1, 1992 [1990], new faculty appointees shall have a minimum of a baccalaureate degree in nursing.
(c) Current licensure to practice as a registered nurse in the Commonwealth of Kentucky.
(d) Qualifications in the clinical or functional are of responsibility, or both.
(e) A minimum of three (3) years of nursing experience as a licensed nurse.
(f) A minimum of one (1) year of registered nursing practice experience during the three (3) years that immediately precede the date of appointment.
(g) Experience in the application of principles in teaching and learning.

Section 3. Evaluation of Registered Nurse and Practical Nurse Faculty. (1) Evaluation of faculty records. The nurse administrator shall submit to the board the qualifications of faculty members upon appointment.
(a) Official college transcripts or copies verified by the nurse administrator or designee shall be available to the board upon request.
(b) A complete and official record of qualifications and workload for each faculty member shall be on file and available to the board upon request.
(2) Reevaluation of faculty records. The board shall review annually the qualifications of the faculty employed in the program of nursing. If standards are not met, the governing institution shall be notified that a new student class may not be enrolled until standards are met. Further, the program of nursing may be subject to conditional approval status in accordance with Section 2(2) of 201 KAR 20:280.

VIRGINIA W. JENKINS, President
APPROVED BY AGENCY: November 6, 1987
FILED WITH LRC: November 20, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on January 23, 1990 at 2 p.m. in Room 420 of the Professional Towers Building, 4010 Dupont Circle, Louisville, Kentucky. Those interested in attending this hearing shall notify the following office in writing by January 18, 1990: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sharon M. Weisenbeck
(1) Type and number of entities affected: Thirty-one programs of registered nurse prelicensure education and 20 programs of practical nurse prelicensure education.
(a) Direct and indirect costs or savings to those affected:
1. First year: Difficult to quantify, but there may be some savings from not having to offer premium salaries to attract certain faculty candidates.
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: 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: Alternative was to maintain the existing regulatory language. It appears that, despite considerable efforts to comply, several programs of nursing education would not be able to meet the new standards by January 1, 1990. Given the critical need for nurses in Kentucky at this juncture, it is preferable to preserve the status quo for two years while the Board of Nursing attempts to resolve the situation to the satisfaction of all concerned.
(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? Yes

TOURISM CABINET
Department of Fish & Wildlife Resources
(Proposed Amendment)

301 KAR 1:146. Commercial fishing gear.

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: It is necessary to accurately describe the gear allowed in commercial fishing so that the proper size and species of fish can be harvested, the sport fish populations are not adversely affected and perpetuation of the fishery resource is assured. This amendment is necessary to readjust the hoop net mesh size on the Ohio River for a two (2) year transition period.

Section 1. The functions of the various commercial fishing tags authorized under KRS 150.175 are consolidated into one (1) tag called "commercial gear tag" which shall serve as they each were designated in KRS 150.175, subsections (5), (6), (7) and (8).

Section 2. All lines and mesh shall be made of linen, cotton or flexible synthetic fiber only. All mesh shall be measured by bar measure. This measure is the length of one (1) side of the square, or as measured between two (2) knots on the same line.

Section 3. The following gear is the only commercial gear that shall be used in commercial waters designated in 301 KAR 1:150 and under conditions described in 301 KAR 1:155 by

appropriately licensed commercial fishermen:

(1) Hoop net, wing net, straight lead net, heart lead net.

(a) Shall have a minimum mesh size of three (3) inches, except in the [lower] Ohio River [below McAlpine Locks and Dam], the Mississippi River, those portions of the Cumberland River below Barkley Dam and the Tennessee River below Kentucky Dam that are open to commercial fishing where the minimum mesh size shall be one (1) inch. Beginning January 1, 1992, the minimum mesh size shall be three (3) inches for all waters.

(b) Hoops may be any size or shape or material.

(c) Maximum length of each lead or wing shall be sixty (60) feet.

(d) Wings and leads must be constructed of multifilament natural or synthetic material only.

(e) Netting used for wings and leads shall be constructed of twine no smaller than number six (#6) nylon or equivalent, having a breaking strength of fifty-five (55) pounds or greater.

(f) Wings and leads may be of knotted or knotless construction and shall have a mesh size no larger than one (1) inch.

(g) Hoop nets, wing nets, straight lead nets or heart lead nets shall be fished as individual nets. Wings or leads shall not be tied together so as to become continuous multiple net units.

(h) Wings and leads shall be used only to lead fish into the hoop net.

(i) One (1) commercial gear tag shall be attached to the first hoop of each net.

(2) Gill net or trammel net.

(a) May be used only in Ohio and Mississippi Rivers and overflow lakes directly connected with each river or as specified in 301 KAR 1:140. Minimum mesh size is three (3) inches in the Mississippi and its overflow lakes and four (4) inches in the Ohio River and its overflow lakes.

(b) May be fished weighted or as a flag net.

(c) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.

(3) Commercial trotline.

(a) Shall have more than fifty (50) hooks placed no closer than eighteen (18) inches apart.

(b) Shall have one (1) commercial gear tag attached.

(c) Shall be no longer than 3,000 feet, including staging, and shall be fished separately, not tied together in a continuous line.

(4) Seine.

(a) Shall have a maximum mesh size of one (1) inch and may be of knotted or knotless construction. Knotted netting shall be constructed of twine no smaller than number 6 (#6) nylon or equivalent having a breaking strength of fifty-five (55) pounds or greater, and knotless netting shall be constructed of twine no smaller than #147 nylon or equivalent having a breaking strength of fifty (50) pounds or greater.

(b) Shall be constructed of multifilament natural or synthetic material only.

(c) Shall have both float and lead lines.

(d) Shall have wood, fiberglass, or metal poles or brailes attached at each end.

(e) Shall be attended by persons pulling the siene by hand through the water for the entrapment of fish.

(f) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.

(5) Slat trap basket.

(a) Shall have no wire or other mesh added to any part of trap.

(b) Shall have at least two (2) openings left between slats no smaller than one and one-fourth (1 1/4) inches wide in the catch portion of the trap. These openings shall not be restricted by cross-bracings to a length shorter than eight (8) inches.

(c) Shall be no larger than two (2) feet in diameter or square-end measure.

(d) Shall have one (1) commercial gear tag attached to opening ring or square.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman

APPROVED BY AGENCY: December 4, 1989
FILED WITH LRC: December 14, 1989 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on Tuesday, January 23, 1990, at 10 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: There are 1,069 licensed commercial fishermen in Kentucky. Approximately 300 of them commercially fish the Ohio River.

(a) Direct and indirect costs or savings to those affected: Liberalizing the hoop net mesh size on the upper Ohio with a two year advance notice of elimination will allow time for cost amortization of present or recently purchased nets and conversion to other types of less expensive gear. Costs differential should be nominal.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork is involved.

(2) Effects on the promulgating administrative body: No additional effort will be required. Policing will be a part of ongoing patrol.

(a) Direct and indirect costs or savings: No significant changes in costs or savings will occur.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be required.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on budgets, funding, manpower levels or equipment needs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The eventual banning the use of small mesh hoop nets is the only approach that removes the threat to the sport fish population.

(5) Identify any statute, administrative regulation or government policy which may be in

conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, overlapping or duplication.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: Prohibiting the use of small mesh (less than 3 inches) hoop nets will not adversely affect the catch of fiddler (12 inch-15 inch) channel catfish which is the target species. Slat baskets which are legal gear are specifically designed to harvest fiddlers and their catch efficiency is much higher.

TIERING: Was tiering applied? No. Commercial fishermen are the only entities regulated. There is no justification for tailored requirements. There is biological justification for tailored resource requirements and as such the allowable use, methods, and gear vary from one body of water to another.

TOURISM CABINET
Department of Fish & Wildlife Resources
(Proposed Amendment)

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

RELATES TO: KRS 150.010, 150.025, 150.470, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: In order to insure the continuance of viable and desirable populations of fish, it is necessary to govern the size and numbers anglers can harvest. This amendment is necessary to <u>establish a trophy bass fishery at Carter Caves Lake and prevent the overharvest of crappie at Taylorsville Lake</u> [set special limits on the Herrington Lake tailwater trout fishery].

Section 1. The statewide creel limits, size limits and possession limits for taking fish by angling shall be as follows, except as specified in Section 3 of this regulation and as provided in 301 KAR 1:180:

	Size Limit Inches	Daily Creel Limit	Possession Limit
Black bass:*			
Largemouth	12)	10	20
Smallmouth	12)	Singly	Singly
Kentucky (spotted)	None)	or in	or in
Coosa	12)	Aggregate	Aggregate
Rock bass (goggle eye or redeye)	None	15	30
Walleye and their hybrids	15	10	20
Sauger	None	10	20
Muskellunge and their hybrids	30	2	2
Northern pike	None	5	10
Chain pickerel	None	5	10
White bass and yellow bass	None	60	60
Striped bass (rockfish) and their hybrids	15	5	5
Crappie	None	60	60
Rainbow trout & brown trout	None	8	8
Brook trout	10	2	2

*For size limit purposes, any black bass, with the exception of the smallmouth, with a patch of teeth on its tongue is considered to be a Kentucky bass.

Section 2. Seasons for all species is year around.

Section 3. The following special limits apply. All other angling limits and seasons apply as set forth in Sections 1 and 2 of this regulation.

(1) The impounded waters of Grayson Lake. The size limit on largemouth bass and smallmouth bass is fifteen (15) inches. There are no daily creel or possession limits on crappie.

(2) The impounded and flowing waters of Dix River and its tributaries upstream from Herrington Lake Dam:

	Size Limit Inches	Daily Creel Limit	Possession Limit
White bass, striped bass (rockfish) and their hybrids	*	20	40

*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

(3) Dix River from Herrington Lake Dam downstream a distance of two (2) miles. The size limit for brown trout is fifteen (15) inches. The daily creel and possession limits for brown trout is three (3) fish. The daily creel and possession limits for brown trout and rainbow trout combined is eight (8) fish of which no more than three (3) fish can be brown trout. Fishing is permitted only with artificial lures or flies. Possession of fish eggs, small bait fish, insects or worms or other similar organic bait or parts thereof while in the possession of fishing tackle in the above described two (2) mile section of Dix River is prohibited.

(4) The impounded waters of Taylorsville Lake. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches. <u>The daily creel and possession limits for crappie are fifteen (15) and thirty (30) respectively.</u>

(5) The impounded waters of Kentucky and Barkley Lakes, including the connecting canal. The size limit for largemouth bass and smallmouth bass is fourteen (14) inches, except that the daily limit may include no more than one (1) and the possession limit no more than two (2) less than fourteen (14) inches in length. The creel and possession limits for crappie are thirty (30) and sixty (60) respectively.

(6) The impounded waters of Cave Run and Dewey Lakes. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches.

(7) The impounded and flowing waters of Barren River and its tributaries upstream from Barren River Lake Dam.

	Size Limit Inches	Daily Creel Limit	Possession Limit
Crappie	10	30	60
White bass, striped bass (rockfish) and their hybrids	*	20	40

*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

(8) The impounded waters of Cumberland Lake. The size limit for largemouth and smallmouth bass is fifteen (15) inches. The creel and possession limits for striped bass (rockfish) are three (3) and three (3) respectively.

(9) In the following brook trout streams fishing is permitted only with artificial flies or lures with a single hook. Possession of fish eggs, small fish, insects, worms, or other similar organic bait or parts thereof while in the possession of fishing tackle is prohibited:

(a) Shillalah Creek, Bell County (outside boundary of Cumberland Gap National Park);

(b) Martins Fork and tributaries in Harlan County from Left Fork upstream 2.3 miles to the Cumberland Gap National Historical Park boundary;

(c) Bad Branch, Letcher County;

(d) Poor Fork and tributaries in Letcher County from the headwaters downstream to the first crossing of Highway 392;

(e) Parched Corn Creek, Wolfe County.

(10) The impounded waters of Carter Caves Lake. The size limit for largemouth bass is twenty (20) inches. The daily creel and possession limits for largemouth bass are one (1) and one (1) respectively. Fishing is permitted only during daylight hours.

Section 4. Measure all fish from the end of the lower jaw to the tip of the tail with fish laid flat on rule, mouth closed and tail lobes squeezed together. All fish caught that are smaller than those prescribed minimum lengths shall be returned immediately to the waters from which they were taken in the best physical condition possible. Under no circumstances may a fisherman remove the head or the tail or part thereof of any of the above-named fish while in the field and before he has completed fishing for the day.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman

APPROVED BY AGENCY: December 4, 1989
FILED WITH LRC: December 14, 1989 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on Wednesday, January 24, 1990, at 10 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: There are over 1 million licensed and unlicensed anglers in Kentucky. Approximately 7,000 of those anglers fish Taylorsville Lake and 500 fish Carter Caves Lake.

(a) Direct and indirect costs or savings to those affected: Some savings in terms of angler expense could occur at Taylorsville as a result of expected reduction in trip frequency. A reduced economic benefit for the dock and marina operation could occur. At Carter Caves, fishing frequency is expected to increase dramatically.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork is involved.

(2) Effects on the promulgating administrative body: No additional effort will be required. Policing and evaluation is a part of ongoing patrol and study.

(a) Direct and indirect costs or savings: No significant increase in costs will occur.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork is required.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on budgets, funding, manpower levels or equipment needs. No loss in license sales but some decrease in economic benefit (dock and marina operation at Taylorsville Lake) is expected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the imposition of harvest restrictions is the only effective means of achieving quality fishing experiences, assuring reproductive viability while at the same time allowing for a reasonable number of fish to be taken from the population.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, overlapping, or a duplication.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: Views on these regulation changes were solicited from the public. No responses were received concerning the Carter Caves Lake proposal. Approximately 50 individuals attended a public meeting on the Taylorsville Lake proposal with 78 percent of those in attendance supporting a reduced creel limit of 10 to 30 fish.

TIERING: Was tiering applied? No. Only one entity, the sport fisherman, is impacted by this regulation. There is no social or biological justification for nonuniform application of angling requirements.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on December [August] 15, 1989 and hereinafter should be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

1.1 Legal Assistance for Corrections Staff
1.2 News Media
1.4 The operation of Contracted Adult Correctional Facilities [(Amended 8/15/89)]
1.6 Extraordinary Occurrence Reports
1.9 Institutional Duty Officer
1.11 Population Counts and Reporting Procedures
1.12 Operation of Motor Vehicles by Corrections Cabinet Employees
2.1 Inmate Canteen [(Amended 8/15/89)]
2.2 Warden's Fund
2.10 Surplus Property
3.1 Code of Ethics
3.12 Institutional Staff Housing
4.2 Staff Training and Development
4.3 Firearms and Chemical Agents Training
6.1 Open Records Law
7.2 Asbestos Abatement
8.4 Emergency Preparedness
9.1 Use of Force
9.3 Transportation of Convicted Offenders
9.4 Transportation of Inmates to Funerals or Bedside Visits
9.6 Contraband
9.7 Storage, Issue and Use of Weapons Including Chemical Agents
9.8 Search Policy
9.9 Transportation of Inmates
9.10 Security Inspections
9.11 Tool Control
9.15 Institutional Entry and Exit Policy and Procedures
9.18 Informants
9.19 Found Lost or Abandoned Property
10.2 Special Management Inmates
10.3 Safekeepers
10.4 Special Needs Inmates
11.2 Nutritional Adequacy of the Diet for Inmates
11.3 Special Diet Procedures
13.1 Pharmacy Policy and Formulary
13.2 Health Maintenance Services
13.3 Medical Alert System
13.4 Health Program Audits
13.5 Acquired Immune Deficiency Syndrome
13.6 Sex Offender Treatment Program
14.2 Personal Hygiene Items
14.3 Marriage of Inmates (Added 12/15/89)
14.4 Legal Services Program [(Amended 8/15/89)]
14.6 Inmate Grievance Procedures
15.1 Hair and Grooming Standards
15.2 Offenses and Penalties
15.3 Meritorious Good Time
15.5 Restoration of Forfeited Good Time
15.6 Adjustment Procedures and Programs
16.1 General Inmate Visiting Procedure
16.2 Inmate Correspondence
16.3 Telephone Calls
16.4 Inmate Packages (Amended 12/15/89)
17.1 Inmate Personal Property (Amended 12/15/89)
17.2 Assessment Center Operations
17.3 Controlled Intake of Inmates
18.4 Classification of the Inmate
18.5 Custody/Security Guidelines
18.6 Classification Document
18.7 Transfers
18.8 Guidelines for Transfers Between Institutions
18.9 Out-of-state Transfers
18.10 Preparole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
18.15 Protective Custody
19.1 Government Services Projects
19.2 Community Services Projects
20.6 Vocational Study Release
22.1 Privilege Trips
25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease Program [(Amended 8/15/89)]
25.4 Inmate Furloughs
25.6 Community Center Program
25.7 Expedient Release
25.8 Extended Furloughs
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers
27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services
27-07-01 Cooperation with Law Enforcement Agencies
27-08-01 Use of Force [(Added 8/15/89)]
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision
27-11-01 Intensive Supervision
27-12-01 Supervision: Case Classification [(Amended 8/15/89)]
27-12-02 Risk/Needs Assessment
27-12-03 Initial Interview [(Amended 8/15/89)]
27-12-04 Conditions of Regular Supervision/Request for Modification
27-12-05 Releasee's Report
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan
27-12-09 Casebook
27-12-10 Guidelines for Monitoring Supervision Fee

27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13	Community Service Work
27-12-14	Client Travel Restrictions
27-13-02	Alcohol Detection
27-14-01	Interstate Compact Transfers
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
27-15-01	Supervision Report; Violations, Unusual Incidents [(Amended 8/15/89)]
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01	Absconder Procedures [(Amended 8/15/89)]
27-18-01	Probation and Parole Issuance of Detainer/Warrant
27-19-01	Preliminary Revocation Hearing [(Amended 8/15/89)]
27-20-01	Division of Probation and Parole Controlled Intake Program
27-20-02	Prisoner Intake Notification
27-20-03	Prisoner Status Change [(Amended 8/15/89)]
27-21-01	Apprehension and Transportation of Probation and Parole Violators
27-22-01	Fugitive Unit - Apprehensions
27-22-02	Fugitive Unit - Transportation of Fugitives
27-23-01	In-state Transfer
27-24-01	Closing Supervision Report
27-24-02	Reinstatement of Clients to Active Supervision
27-25-01	Application for Final Discharge from Parole
27-26-01	Assistance to Former Clients and Dischargees
27-27-01	Restoration of Civil Rights
27-28-01	Firearms/Explosives: Application for Relief from Disability
27-29-01	Parole Review Dates Modification
28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts) [(Amended 8/15/89)]
28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01	Expedient Release Program
28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: December 15, 1989
FILED WITH LRC: December 15, 1989 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 22, 1990 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: 2,625 employees of the Corrections Cabinet, 8,145 inmates, 11,031 parolees and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity

with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on December 15 [October 13], 1989 and hereinafter should be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09	Public Information and News Media Relations
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-14	Extraordinary Occurrence Report (Amended 12/15/89)
KSR 01-00-15	Cooperation and Coordination with Oldham County Court
KSR 01-00-19	Personal Service Contract Personnel
KSR 01-00-20	Consent Decree Notification to Inmates
KSR 02-00-01	Inmate Canteen
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11	Inmate Personal Accounts
KSR 02-00-12	Institutional Funds and Issuance of Checks
KSR 04-00-02	Staff Training and Development
KSR 05-00-01	Officers' Daily Housing Security and Safety Log
KSR 05-00-02	Research Activities
KSR 05-00-03	Management Information Systems
KSR 06-00-01	Inmate Master File
KSR 06-00-02	Records Audit
KSR 06-00-03	Kentucky Open Records Law and Release of Psychological/ Psychiatric Information
KSR 07-00-02	Institutional Tower Room Regulations
KSR 07-00-04	Handling of PCB Articles and Containers
KSR 07-00-05	Proper Removal of Transformers
KSR 07-00-06	Asbestos Abatement
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08	Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery
KSR 08-00-09	Emergency Preparedness Training
KSR 08-00-10	Hazardous Chemicals and Material Safety Data Sheet
KSR 09-00-04	Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05	Gate I Entrance and Exit Procedure
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-14	Use of Force
KSR 09-00-21	Crime Scene Camera
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23	Drug Abuse Testing
KSR 09-00-25	Inmate Motor Vehicle Operator's License
KSR 09-00-26	Contraband Outside Institutional Perimeter
KSR 09-00-27	Construction Crew Entry/Exit
KSR 09-00-28	Restricted Areas
KSR 09-00-29	Transportation of Inmates
KSR 10-00-01	Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records
KSR 10-00-02	Unit D - General Operational Procedures
KSR 10-00-03	Unit D - Inmate Tracking System and Records System [(Amended 10/13/89)]
KSR 10-00-04	Unit D - Administrative Segregation [(Amended 10/13/89)]
KSR 10-00-05	Unit D - Disciplinary Segregation [(Amended 10/13/89)]
KSR 10-00-06	Unit D - Protective Custody [(Amended 10/13/89)]
KSR 10-00-07	Unit D - Geriatrics
KSR 10-00-08	Unit D - Safekeepers [(Amended 10/13/89)]
KSR 10-00-09	Unit D - Hold Ticket Residents
KSR 10-00-10	Unit D - Inmate Legal Access
KSR 10-00-11	Unit D - Behavior Problem Control
KSR 10-00-12	Unit D - Designated Staff Visits
KSR 10-00-13	Unit D - Property Room Access
KSR 11-00-01	Meal Planning for the General Population
KSR 11-00-02	Special Diets (Amended 12/15/89)
KSR 11-00-03	Food Service Inspections
KSR 11-00-04	Dining Room Dress Code for Inmates (Amended 12/15/89)
KSR 11-00-06	Health Standards/Regulations for Food Service Employees
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01	Inmate Summer Dress Regulations
KSR 12-00-02	Sanitation and General Living Conditions
KSR 12-00-03	State Items Issued to Inmates
KSR 12-00-07	Regulations for Inmate Barbershop
KSR 13-00-01	Identification of Mentally Retarded Inmates
KSR 13-00-02	Hospital Operations, Rules and Regulations
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds
KSR 13-00-04	Medical and Dental Care (Amended 12/15/89)
KSR 13-00-06	Infection Control
KSR 13-00-07	Referral of Inmates Considered to Have Severe Emotional Disturbances
KSR 13-00-08	Institutional Laboratory Procedures
KSR 13-00-09	Institutional Pharmacy Procedures
KSR 13-00-10	Requirements for Medical Personnel
KSR 13-00-11	Preliminary Health Evaluation and Establishment of Inmate Medical Record
KSR 13-00-12	Vision Care/Optometry Services
KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 13-00-15	Medical Alert System
KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 14-00-01	Inmate Rights
KSR 14-00-02	A/C Center and Unit D Inmate Access to Legal Aide Services
KSR 14-00-04	Inmate Grievance Procedure
KSR 14-00-05	Inmate Marriages
KSR 14-00-06	Inmate Legal Aides (Amended 12/15/89)
KSR 15-00-02	Regulations Prohibiting Immate Control or Authority Over Other Inmate(s)
KSR 15-00-04	Restoration of Forfeited Good Time
KSR 15-00-05	Differential Status for SU (QUIT) Inmates

KSR 15-00-06	Inmate I.D. Cards
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08	Firehouse Living Area
KSR 15-00-10	Program Services for Special Housing Placement
KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
KSR 15-01-02	Staff Operational Procedure
KSR 15-01-03	Inmate Rules and Regulations
KSR 15-01-04	Institutional Medical and Fire Safety Service: Unit Application
KSR 15-01-05	Institutional Inmate Services
KSR 15-01-06	Inmate Housing Criteria and Regulations, Honor Status and General Population
KSR 16-00-01	Visiting Regulations
KSR 16-00-02	Inmate Correspondence and Mailroom Operations
KSR 16-00-03	Inmate Access to Telephones
KSR 17-00-01	Housing Unit Assignment - Assessment/Classification Center
KSR 17-00-03	Notifying Inmates' Families of Admission and Procedures for Mail and Visiting
KSR 17-00-04	Assessment/Classification Center Operations, Rules and Regulations
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations
KSR 20-00-01	Vocational School Referral and Release Process
KSR 20-00-03	Academic School Programs
KSR 20-00-04	Criteria for Participation in Jefferson Community College Program
KSR 20-00-08	Integration of Vocational and Academic Education Programs
KSR 21-00-01	Legal Aide Office and Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate News Magazine
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming (Amended 12/15/89)
KSR 25-00-01	Discharge of Residents to Hospital or Nursing Home
KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03	Preparole Progress Report

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: December 15, 1989
FILED WITH LRC: December 15, 1989 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 22, 1990 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones
(1) Type and number of entities affected: 542 employees of the Kentucky State Reformatory, 1423 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on December [September] 15, 1989 and hereinafter should be referred to as Kentucky State Penitentiary Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet,

State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSP 000000-06 Administrative Regulations
KSP 010000-04 Public Information and Media Communication
KSP 020000-15 Legal Assistance
KSP 030000-01 Inventory Records and Control
KSP 030000-04 Requisition and Purchase of Supplies and Equipment
KSP 030000-05 Inmate Personal Funds (Amended 12/15/89)
KSP 030000-06 Inmate Commissary Program
KSP 040000-01 Management Information System
KSP 040000-02 Inmate Records
KSP 040000-08 Inmate Equal Opportunity Policy
KSP 050000-14 Searches and Preservation of Evidence [(Amended 9/15/89)]
KSP 060000-01 Special Security Unit
KSP 060000-02 Operational Procedures for Disciplinary Segregation, Administrative Segregation, Administrative Control and Behavioral Control Units
KSP 060000-04 Protective Custody Unit
KSP 070000-01 Hospital Services
KSP 070000-02 Sick Call
KSP 070000-03 Health Evaluations
KSP 070000-04 Consultations
KSP 070000-05 Emergency Medical Procedure
KSP 070000-13 Pharmacy Procedures
KSP 070000-14 Medical Records
KSP 070000-16 Psychiatric and Psychological Services
KSP 070000-17 Dental Services for Special Management Units
KSP 070000-19 Optometric Services
KSP 070000-20 Menu Preparation and Planning
KSP 070000-24 Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 070000-25 Food Service Inspections
KSP 070000-30 Therapeutic Diets
KSP 090000-01 Inmate Work Programs
KSP 090000-03 Correctional Industries (Amended 12/15/89)
KSP 100000-02 Visiting Program
KSP 100000-03 Disposition of Unauthorized Property
KSP 100000-04 Inmate Grooming and Dress Code (Amended 12/15/89)
KSP 100000-05 Procedures for Providing Clothing, Linens and Other Personal Items (Amended 12/15/89)
KSP 100000-06 Inmate Mail and Packages
KSP 100000-07 Inmate Telephone Access (Amended 12/15/89)
KSP 100000-08 Behavioral Counseling Record
KSP 100000-09 Due Process/Disciplinary Procedures
KSP 100000-11 Authorized and Unauthorized Inmate Property
KSP 100000-14 Property Room: Clothing Storage and Inventory
KSP 100000-15 Uniform Cell Standards for Fire Safety, Sanitation and Security
KSP 100000-18 Inmate Grievance Committee Hearings
KSP 100000-20 Legal Services Program
KSP 100000-21 Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 110000-04 Preparole Progress Report (Amended 12/15/89)
KSP 110000-06 General Guidelines of the Classification Committee
KSP 110000-07 Statutory Good Time Restoration
KSP 110000-08 Award of Meritorious Good Time
KSP 110000-10 Special Needs Inmates (Amended 12/15/89)
KSP 110000-12 Unit Classification Committee - Inmate Work Assignments
KSP 110000-13 Classification Document
KSP 110000-14 Vocational School Placement
KSP 110000-15 Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-16 Consideration of Further Treatment Requirements for Inmates Prior to Release (Amended 12/15/89)
KSP 110000-18 Functions of the Classification Committee
KSP 120000-04 Academic Education
KSP 120000-07 Community Center Program
KSP 120000-08 Inmate Furloughs
KSP 120000-11 Religious Services - Staffing
KSP 120000-18 Religious Services - Religious Programming
KSP 120000-20 Marriage of Inmates
KSP 120000-31 Extended Furloughs
KSP 120000-32 Discharge of Inmates by Shock Probation
KSP 130000-10 Execution Plan

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: December 15, 1989
FILED WITH LRC: December 15, 1989 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 22, 1990 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: 352 employees of the Kentucky State Penitentiary, 797 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on December [September] 15, 1989 and hereinafter should be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

NTC 01-03-01	Organization and Assignment of Responsibilities (Amended 12/15/89)
NTC 01-05-01	Extraordinary Occurrence Reports
NTC 01-10-01	Legal Assistance for Staff
NTC 01-11-01	Political Activities of Merit Employees
NTC 01-15-01	Establishment of the Warden as Chief Executive Officer
NTC 01-17-01	Relationships with Public, Media and Other Agencies
NTC 02-02-02	Warden's Participation in the Agency Budgeting Process
NTC 02-03-01	Fiscal Management: Audits
NTC 02-04-01	Internal Control and Monitoring of Accounting Procedures
NTC 02-07-02	Chapel Fund
NTC 02-08-01	Inmate Canteen (Amended 12/15/89)
NTC 02-10-01	Insurance Coverage
NTC 02-12-01	Inmate Personal Accounts
NTC 04-01-01	Training and Staff Development
NTC 04-04-01	Firearms and Chemical Agents Training
NTC 06-01-01	Offender Records
NTC 06-01-02	Records - Release of Information
NTC 06-01-03	Taking Offender Record Folders onto the Yard
NTC 08-05-01	The Fire and Safety Officer
NTC 08-05-02	Fire Procedures
NTC 08-05-03	Fire Prevention
NTC 08-05-04	Storage of Flammables and Dangerous Chemicals and Their Use
NTC 08-07-01	Safety Standards
NTC 10-01-01	Special Management Inmates (SMU)
NTC 10-02-01	Security Guidelines for Special Management Inmates
NTC 10-03-01	Protective Custody
NTC 11-03-01	Food Services: General Guidelines [(Amended 9/15/89)]
NTC 11-04-01	Food Service: Meals [(Amended 9/15/89)]
NTC 11-04-02	Menu, Nutrition and Special Diets
NTC 11-05-02	Health Standards/Regulations for Food Service Employees
NTC 11-06-01	Inspections and Sanitation [(Amended 9/15/89)]
NTC 11-07-01	Purchasing, Storage and Farm Products
NTC 12-01-01	Institutional Inspections
NTC 12-02-01	Personal Hygiene for Inmates; Clothing and Linens
NTC 12-02-02	Issuance of Personal Hygiene Products
NTC 13-01-01	Emergency Medical Care Plan
NTC 13-01-02	Emergency and Specialized Health Services
NTC 13-02-01	Administration and Authority for Health Services
NTC 13-03-01	Sick Call and Pill Call
NTC 13-04-01	Utilization of Pharmaceutical Products
NTC 13-05-01	Dental Services
NTC 13-06-01	Licensure and Training Standards
NTC 13-07-01	Provisions for Health Care Delivery
NTC 13-08-01	Medical and Dental Records
NTC 13-09-01	Special Diets
NTC 13-11-01	Inmate Health Screening and Evaluation
NTC 13-12-01	Special Health Care Programs
NTC 13-17-01	Inmates Assigned to Health Services
NTC 13-19-01	Mental Health Care Program
NTC 13-19-03	Suicide Prevention and Intervention Program
NTC 13-20-01	Infectious Disease
NTC 13-21-01	Vision Care/Optometry Services
NTC 13-22-01	Informed Consent
NTC 13-23-01	Special Needs Inmates
NTC 14-01-01	Legal Services Program [(Amended 9/15/89)]
NTC 14-01-02	Receiving and Viewing of Video Tapes [(Amended 9/15/89)]
NTC 14-02-01	Inmate Grievance Procedure
NTC 14-03-01	Inmate Rights and Responsibilities
NTC 14-03-02	Board of Claims
NTC 14-04-01	Inmate Search Policy (Amended 12/15/89)
NTC 15-01-01	Restoration of Forfeited Good Time
NTC 15-02-01	Due Process/Disciplinary Procedures [(Amended 9/15/89)]
NTC 15-02-02	Extra Duty Assignments
NTC 15-02-03	Hearing Officer
NTC 15-03-01	Rules for Inmates Assigned to Outside Detail
NTC 15-03-02	Rules and Regulations for General Population Dormitories
NTC 15-04-01	Inmate Identification
NTC 16-01-01	Mail Regulations
NTC 16-02-01	Visiting (Amended 12/15/89)
NTC 16-02-02	Extended and Special Visits
NTC 16-02-03	Honor Dorm Visiting (Amended 12/15/89)
NTC 16-03-01	Inmate Furloughs
NTC 16-05-01	Telephone Use and Control (Amended 12/15/89)
NTC 17-01-01	Personal Property Control
NTC 17-01-02	Authorized Inmate Personal Property
NTC 17-01-03	Unauthorized Inmate Property
NTC 17-01-04	Disposition of Unauthorized Property
NTC 17-03-01	Assessment/Orientation
NTC 18-01-01	Preparole Progress Report
NTC 18-02-01	Classification

NTC 18-02-02	Classification - 48 Hour Notification
NTC 18-03-01	Special Notice Form
NTC 18-05-01	Transfers of Inmates
NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01	Inmate Work Program
NTC 19-01-03	Temporary Leave from Job Assignment
NTC 19-02-01	Correctional Industries
NTC 19-02-02	Guidelines for Correctional Industries
NTC 20-01-01	Academic School Program
NTC 20-02-01	Vocational School
NTC 20-02-02	Live Work Projects in Vocational School Classes
NTC 21-01-01	Library Services
NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01	Religious Services
NTC 24-04-01	Honor Status
NTC 24-05-01	Unit Management
NTC 25-01-01	Release Preparation Program
NTC 25-01-02	Temporary Release/Community Center Release
NTC 25-01-03	Graduated Release
NTC 25-02-01	Funeral Trips and Bedside Visits (Amended 12/15/89)
NTC 25-03-01	Inmate Release Procedure
NTC 26-01-01	Citizen Involvement and Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: December 15, 1989
FILED WITH LRC: December 15, 1989 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 22, 1990 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: 296 employees of the Northpoint Training Center, 927 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 1:140. U-drive-it permit application procedures [and usage tax].

RELATES TO: KRS Chapters 138, 186, 281
STATUTORY AUTHORITY: KRS 138.463, 186.005, 281.600
NECESSITY AND FUNCTION: The Transportation Cabinet has the authority and responsibility to assess and collect the monthly U-drive-it usage tax and to qualify U-drive-it operators. This regulation sets out the procedures to be followed by an applicant for a U-drive-it permit. It also establishes procedures for obtaining a vehicle identification document and for the payment of the monthly usage tax.

Section 1. The application for a permit to engage in the business of U-drive-it as defined by KRS 281.014(4) or for the annual renewal of the permit shall be on the forms prescribed and furnished by the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers, and shall be accompanied by a filing fee of twenty-five (25) dollars. Payments made by check or money order shall be made payable to "Kentucky State Treasurer."

Section 2. (1) All initial applications for a U-drive-it permit shall be the subject of a hearing before the cabinet in accordance with the procedures established by administrative regulation 601 KAR 1:030.
(2) Applicants for a U-drive-it permit shall be required to meet the standards established by KRS 281.626. Prior to any application being docketed and noticed for hearing, the applicant shall submit to the Division of Motor Carriers evidence, which may include affidavits, attesting to the fact that the applicant is fit, willing and able to provide the requested service, and that the operation proposed by the applicant is [a bona fide operation. (For the purposes of this regulation a bona fide operation is] one in which each transaction is arm's length and is based on a fair rental value of the vehicle.[)] Upon determination by the division that the application is complete, the cabinet shall set the matter for hearing.
(3) The cabinet shall give a minimum of thirty (30) days written notice of each hearing to all required and interested parties. The [Such] notice shall state the time and place the hearing will be held, shall fully describe the matter to be heard, shall contain the name and address of the party initiating or involved in the matter to be heard, and shall contain the docket number assigned to the matter by the cabinet. The notice shall state that anyone having an interest in the matter may file a

protest or other proper pleading in accordance with the requirements of the regulations of the cabinet. Any application filed may in the discretion of the Commissioner of the Department of Vehicle Regulation be considered at a consolidated hearing or may be heard independently at a time set by the cabinet.

(4) All protests, pleadings, motions, and other papers shall [must] be filed with the cabinet in duplicate and shall refer to [be typewritten and double-spaced on white eight and one-half (8 1/2) inch by eleven (11) inch size paper, properly styled with the matter to which they are relative, and] the docket number assigned thereto by the cabinet, if any. All protests shall [must] be filed no later than ten (10) days prior to the scheduled hearing. [Any protests, pleading, motion, or other paper may be printed and, if printed, need not be on eight and one-half (8 1/2) inch by eleven (11) inch size paper and double-spaced.] Pleadings, protests, motions or other papers filed by the parties represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when specifically provided otherwise, pleadings need not be verified or accompanied by an affidavit. The attorney's signature shall constitute the certification by him that he has read the matter; that to the best of his knowledge, information, and belief the statements contained therein are true; and that it is not interposed for delay. If the matter is not signed or is signed with the intent to defeat the purpose of this administrative regulation [rule], it may be stricken as sham and false, and the matter may proceed as though there had been no filing. All protests shall [must] state the statutory grounds of the [such] protest and the reasons therefor. That which is not filed in conformance herewith will not be considered or accepted as a matter of record.

(5) Any application which is protested or which is brought into question by the cabinet shall be set for a separate hearing.

[Section 3. Any U-drive-it permit holder who under the terms of KRS 154.690 claims exemption from the payment of usage taxes shall file annually with the Department of Vehicle Regulation a copy of his certificate from the Enterprise Zone Authority of Kentucky. If a U-drive-it permit holder obtains an exemption under KRS 154.690 at any time after his initial application for a U-drive-it permit, he shall be required to file a copy of the certification with the department. If any U-drive-it permit holder ceases to be certified under KRS 154.690, then he shall immediately notify the department in writing.]

[Section 4. Payment of all applicable seat taxes imposed by KRS 186.281 shall be due and payable to the department at the time of application for the vehicle identification document (fee receipt card). Seat taxes shall be applicable to cargo-carrying vehicles operated in Kentucky to the extent of the normal passenger carrying capacity of the vehicle. At the time a U-drive-it permit holder pays to the department the annual seat tax imposed by KRS 186.281 he shall apply for a vehicle identification document for each vehicle to be operated under the U-drive-it permit in Kentucky. The application for a vehicle identification document shall be made to the Department of Vehicle Regulation, Division of Motor Carriers, on forms prescribed and furnished by the department. The application shall be accompanied by a vehicle equipment list which identifies each vehicle. For each vehicle listed for the first time on an equipment list, the applicant shall provide a copy of both front and back of either the manufacturer's statement of origin or the registration of the vehicle. The vehicle identification document (fee receipt card) must be renewed annually prior to the expiration of the vehicle's registration license plate.]

[Section 5. A photocopy of the vehicle identification document (fee receipt card) shall at all times, be carried in the vehicle for which it was issued and shall be subject to inspection by any proper representative of the Transportation Cabinet or other law enforcement agency. A copy of the vehicle identification document must be presented to the county clerk upon the initial registration of any vehicle being registered under a U-drive-it permit. The vehicle identification document shall be used to assess the usage tax imposed by KRS Chapter 138.]

[Section 6. No vehicle may be operated under a U-drive-it permit until the permit holder has paid the applicable seat tax imposed by KRS 186.281 and obtained a vehicle identification document for the vehicle. When a vehicle ceases to be operated under a U-drive-it permit, the permit holder shall advise the department in writing within fifteen (15) days. The notice shall include a complete description of the vehicle including its identification number.]

[Section 7. The U-drive-it permit holder who is eligible under KRS 138.463 to elect as to the payment of the usage tax shall make his election at the time of his application for his vehicle identification document (fee receipt card). No change in the method of the payment of the usage tax will be permitted during the term of the ownership of the vehicle. Any U-drive-it permit holder who loses his certificate under KRS 154.690 and who is eligible under KRS 138.463 to elect as to the payment of the usage tax shall make such election at the time he notifies the department of his loss of certification.]

[Section 8. Any holder of a U-drive-it permit who reports and pays the tax imposed by KRS 138.463 shall report such taxes on a monthly basis on the forms prescribed and furnished by the department. Tax reports and payments shall be due on or before the end of the succeeding month following the period covered by the tax report. Any holder of a U-drive-it permit with vehicles registered pursuant to an approved fleet registration allocation shall report and pay to the department the monthly usage tax at the rate imposed by KRS 138.463 on all vehicles rented from all its Kentucky locations, regardless of the state of licensing of those vehicles. Such holder must also license in Kentucky, pay the applicable seat tax imposed by KRS 186.281, and obtain a vehicle identification document (fee receipt card) for the number of vehicles at least equal to the number of vehicles to be registered in Kentucky by the approved allocation formula. Tax payments not timely made shall be subject to penalties and

interest.]

[Section 9. Tax records, and records of the payment thereof, shall be maintained by U-drive-it permit holders for a period as set forth in KRS 138.463(5), and shall be subject to audit by proper representatives of the Transportation Cabinet.]

[Section 10. If a vehicle on which the usage tax is being paid pursuant to KRS 138.463 is transferred to another party within 180 days of its registration and if less than 5,000 miles have been placed on the vehicle during its registration as a U-drive-it vehicle, then the new owner is required to pay the usage tax imposed by KRS 138.460 based on the taxable value of the vehicle as required by KRS 138.450(4)(e). In such a case, the U-drive-it permit holder cannot claim credit for any usage tax remitted for the vehicle.]

JEROME L. LENTZ, Commissioner
MILO D. BRYANT, Secretary/Commissioner
APPROVED BY AGENCY: November 21, 1989
FILED WITH LRC: December 5, 1989 at 11 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 22, 1990 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 January 17, 1990 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 January 17, 1990. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All U-drive-it permit holders and applicants in Kentucky.
(a) Direct and indirect costs or savings to those affected: None - this regulation is amended to remove the sections relating to usage tax. The usage tax sections are repromulgated in 601 KAR 1:145.
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 - this regulation is amended to remove the sections relating to usage tax. The usage tax sections are repromulgated in 601 KAR 1:145.
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:
TIERING: Was tiering applied? No. All applicants for a U-drive-it permit should follow the same procedures, otherwise the program would be exceedingly difficult to administer.

TRANSPORTATION CABINET
Department of Highways
Division of Traffic
(Proposed Amendment)

603 KAR 5:150. Encroachment permits.

RELATES TO: KRS 176.050, 177.047, 177.103, 177.106
STATUTORY AUTHORITY: KRS 176.050, 177.047, 177.106
NECESSITY AND FUNCTION: KRS 176.050 requires the Department of Highways to prescribe regulations for the care and maintenance of roads after they have been constructed. KRS 177.047 requires that any person who intends to lay conduit, pipes, poles or wires over or under a city street that is part of the state-maintained system of highways do so in accordance with administrative regulations of the Department of Highways. KRS 177.106 requires any person to obtain a permit for any encroachment to the right-of-way of any state highway. This administrative regulation provides the policies and procedures in maintenance of highways to allow encroachments onto a highway or right-of-way.

Section 1. (1) The following manual published by the Kentucky Transportation Cabinet, Department of Highways, is incorporated herein by reference and made a part hereof as fully as if set forth in length: "Kentucky Department of Highways Permits [Guidance] Manual," Chapters One through Nineteen, as revised and effective April 4, 1989. This manual shall govern the issuance of encroachment permits by the Department of Highways. [and Two, as amended September 24, 1984 and October 22, 1984.]
(2) Copies of the "Kentucky Department of Highways Permits [Guidance] Manual" may be obtained from the Division of Management Services, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622. Or the manual may be reviewed and copied in the Division of Traffic, State Office Building, Frankfort, Kentucky or any of the twelve (12) highway district offices between 8 a.m. and 4:30 p.m. local prevailing time weekdays.
[(3) This document contains the policies and

procedures that are used by the Department of Highways, Division of Traffic Permits Section. Topics covered are:]

[(a) Chapter One: General Information-Encroachment Permits. Chapter One defines the terms used in this manual and explains types of encroachment permits, related processing forms, bookkeeping methods and application documentation procedure. General safety requirements are outlined and indemnity requirements and procedures are listed. References and specifications from other sources are listed along with requirements for restoration of right-of-way and maintenance of the encroachments. Legal and obligatory considerations are included and exhibits are provided for the various forms and documentation.]

[(b) Chapter Two: Permittable Encroachments. Chapter Two includes policy, conditions and requirements for the various types of permittable encroachments. Cost participation procedures and safety requirements particular to each type of permit are explained. The types of permittable encroachments included are:]

[1. Utilities.]
[2. Entrances and related roadway modifications.]
[3. Grading and/or landscaping.]
[4. Geophysical surveys.]
[5. Ponding of water on right-of-way.]
[6. Air space.]
[7. Treated sewage effluent.]
[8. Right-of-way fence replacement.]
[9. Dispense refreshments on holidays.]
[10. Mailbox turnouts.]
[11. Garbage containers.]
[12. Transit shelters.]
[13. Trim or cut trees.]
[14. Use of chemicals.]
[15. Fairs, parades, festivals and banners.]

[Standard drawings and specifications particular to different types of encroachment permits are included in this chapter.]

O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: December 6, 1989
FILED WITH LRC: December 8, 1989 at noon

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 22, 1990 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 January 17, 1990 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 January 17, 1990. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All property owners and traveling public on state highway systems.
(a) Direct and indirect costs or savings to those affected: None. The guidance manual which is incorporated by reference was revised and reorganized for clarity. There were no major changes.
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. There were no major changes.
(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: The overdue decision was reached to clarify the guidance manual; therefore, the regulation had to be updated.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes.

PUBLIC PROTECTION & REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:022. Gas safety and service.

RELATES TO: KRS 278.485, 278.502
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation establishes general rules which apply to gas utilities.

Section 1. General. (1) [(2)] Definitions. As used in this regulation:
(a) "British thermal unit (BTU)" means [the] quantity of heat that must be added to one (1) pound of pure water to raise its temperature from fifty-eight and one-half (58.5) degrees Fahrenheit to fifty-nine and one-half (59.5) degrees Fahrenheit at the absolute pressure of a column of pure mercury thirty (30) inches high at thirty-two (32) degrees Fahrenheit under standard gravity (32 [43].174 ft. per sec-sec).
(b) "Commission" means the Public Service Commission.
(c) "Cubic foot of gas" means the following:
1. If [In cases where] gas is supplied and

metered to customers at [the] standard distribution pressure, a cubic foot of gas shall be defined as that [to be the] volume of gas which, at the temperature and pressure existing in the meter, occupies one (1) cubic foot.

2. If [In cases where] gas is supplied to customers through turbine, orifice or positive displacement meters at other than standard distribution pressure, a cubic foot of gas shall be defined as [to be] that volume of gas which, at sixty (60) degrees Fahrenheit and at absolute pressure of 14.73 pounds per square inch, (thirty (30) inches of mercury), occupies one (1) cubic foot; except that in cases where different bases that are considered by the commission to be fair and reasonable are provided for in gas sales contracts or in rules or practices of a utility, such different bases shall be effective.

3. The standard cubic foot of gas for testing the gas itself for heating value shall be that volume of gas which, when saturated with water vapor and at [a] temperature of sixty (60) degrees Fahrenheit, and under [a] pressure equivalent to that of thirty (30) inches of mercury (mercury at thirty-two (32) degrees Fahrenheit and under standard gravity) occupies one (1) cubic foot.

(d) "Customer piping" means all approved equipment and material required for natural gas service downstream from the property line except for the service tap including saddle (tapping tee) and first service valve and meter (service regulator where required).

(e) "Distribution line" means a pipeline other than a gathering or transmission line.

[(f) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive.]

(f) [(g)] "Gathering line" means a pipeline that transports gas from a current production facility to a transmission line or main.

(g) [(h)] "High pressure distribution system" means a distribution system in which [the] gas pressure in the main is higher than [the] pressure provided to the customer.

(h) [(i)] "Listed specification" means a specification listed in Section 1 of Appendix B of this regulation.

(i) [(j)] "Low-pressure distribution system" means a distribution system in which [the] gas pressure in the main is substantially the same as [the] pressure provided to the customer.

(j) [(k)] "Main" means a distribution line that serves as a common source of supply for more than one (1) service line.

(k) [(l)] "Maximum actual operating pressure" means the maximum pressure that occurs during normal operations over a period of one (1) year.

(l) [(m)] "Maximum allowable operating pressure (MAOP)" means the [that] maximum pressure at which a pipeline or segment of a pipeline may be operated under this regulation.

(m) [(n)] "Meter" means any device used to measure [for the purpose of measuring] the quantity of gas delivered by utility to a customer.

(n) [(o)] "Operator" means a utility as defined in KRS 278.010.

[(p) "Person" means any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association, and including any trustee, receiver, assignee, or personal representative thereof.]

(o) [(q)] "Pipe" means any pipe or tubing used in [the] transportation of gas, including pipe-type holders.

(p) [(r)] "Pipeline" means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

(q) [(s)] "Pipeline facility" means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.

(r) "Pressure, absolute" means total gas pressure, which is the sum of barometric pressure plus line gas pressure (gauge), abbreviated as psia.

(s) "Pressure, gauge" means pounds per square inch above atmospheric pressure, abbreviated as psig.

(t) "Secretary" means the Secretary of the U.S. Department of Transportation or any person to whom he has delegated authority [in the matter concerned].

(u) "Service line" means a distribution line that transports gas from a common source of supply to:

[1.] customer meter or [the] connection to a customer's piping, whichever is farther downstream; or

[2. The] connection to a customer's piping if there is no customer meter. [A customer meter is the meter that measures the transfer of gas from an operator to a consumer.]

(v) "SMYS" means specified minimum yield strength and is defined as:

1. For steel pipe manufactured in accordance with a listed specification, the yield strength specified as a minimum in that specification; or

2. For steel pipe manufactured in accordance with an unknown or unlisted specification, the yield strength determined in accordance with Section 3(4)(b) of this regulation.

(w) "State" means each [of the several] state, the District of Columbia, or [and] the Commonwealth of Puerto Rico.

(x) "Therm" means the unit of heating value equivalent to 100,000 British thermal units.

(y) "Transmission line" means a pipeline, other than a gathering line that:

1. Transports gas from a gathering line or storage facility to a distribution center or storage facility;

2. Operates at a hoop stress of twenty (20) percent or more of SMYS; or

3. Transports gas within a storage field.

[(z) "Transportation of gas" means the gathering, transmission, or distribution of gas by pipeline or the storage of gas.]

(2) [(1)] Scope [of this Regulation]. This regulation prescribes minimum safety and service standards for natural gas utilities operating under the jurisdiction of the commission.

(a) Utilities serving customers under KRS 278.485 or other retail customers, under the jurisdiction of the [this] commission, directly from transmission or gathering lines are exempt from the following sections of this regulation insofar as they apply to these customers:

1. Section 9, subsections (2)(b) through (f), (16) and (17);

2. Section 13, subsections (14), (15), and (16);

3. Section 14, subsection (22);

4. Section 15; and
5. Section 16.

(b) Each utility shall make all reasonable efforts to prevent interruptions of service and if [when such] interruptions occur, shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its consumers and the general public. Planned interruptions shall always be preceded by adequate notice to all affected customers.

(3) Class locations.

(a) [The] Class location is determined by applying [the] criteria set forth in this section: [. The] Class location unit is an area that extends 220 yards on either side of the centerline of any continuous one (1) mile length of pipeline. Except as provided in paragraphs (d)[2] and (f) of this section, [the] class location is determined by [the] buildings in the class location unit. For the purpose of this section, each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.

(b) A Class 1 location is any class location unit that has ten (10) or less buildings intended for human occupancy.

(c) A Class 2 location is any class location unit that has more than ten (10) but less than forty-six (46) buildings intended for human occupancy.

(d) A Class 3 location is[:

1.] any class location unit that has forty-six (46) or more buildings intended for human occupancy; or

[2.] an area where the pipeline lies within 100 yards of either a [any of the following:

a. A] building or a [that is occupied by twenty (20) or more persons during normal use.

b. A] small, well-defined outside area [that is occupied by twenty (20) or more persons during normal use,] (such as playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by twenty (20) or more persons on at least five (5) days a week for ten (10) weeks in any twelve (12) month period. (The days and weeks need not be consecutive.)

(e) A Class 4 location is any class location unit where buildings with four (4) or more stories above ground are prevalent.

(f) [The] Boundaries of [the] class locations determined in accordance with paragraphs (a) through (e) of this section may be adjusted as follows:

1. [A] Class 4 location ends 220 yards from the nearest building with four (4) or more stories above ground.

2. When a cluster of buildings intended for human occupancy requires a Class 3 location, [the] Class 3 location ends 220 yards from the nearest building in the cluster.

3. When a cluster of buildings intended for human occupancy requires a Class 2 location, [the] Class 2 location ends 220 yards from the nearest building in the cluster.

(4) Incorporation by reference.

(a) Any documents or parts thereof incorporated by reference in this section are a part of this regulation as though set out in full.

(b) All incorporated documents are available for inspection in the offices of the Public Service Commission, Frankfort, Kentucky. These materials have been approved for incorporation by reference by the Legislative Research Commission. These [In addition, the] documents are also available at the addresses provided in Appendix A to this regulation.

(c) [The] Full titles for [the] publications incorporated by reference in this section are provided in Appendix A to this regulation. Numbers in parenthesis indicate applicable editions.

(5) Gathering lines. Each gathering line must comply with [the] requirements of this regulation applicable to transmission lines except as exempted in Section 1(1)(a) of this regulation.

(6) Petroleum gas systems.

(a) No utility shall [may] transport petroleum gas in a system that serves ten (10) or more customers, or in a system, any portion of which is located in a public place (such as a highway), unless that system meets the requirements of this regulation and of NFPA Standards No. 58 and 59. In the event of a conflict, the requirements of this regulation prevail.

(b) Each petroleum gas system covered by paragraph (a) of this subsection shall [must] comply with the following:

1. Aboveground structures shall [must] have open vents near [the] floor level.

2. Below-ground structures shall [must] have forced ventilation that will prevent any accumulation of gas.

3. Relief valve discharge vents shall [must] be located [so as] to prevent any accumulation of gas at or below ground level.

4. Special precautions shall [must] be taken to provide adequate ventilation when excavations are made to repair an underground system.

(c) For the purpose of this subsection, petroleum gas means propane, butane, or mixtures of these gases, other than a gas mixture [that is] used to supplement supplies in a natural gas distribution system.

(7) General.

(a) No person may operate a pipeline segment [of pipeline that is] readied for service after March 12, 1971, unless:

1. The pipeline has been designed, installed, constructed, initially inspected, and initially tested in accordance with this regulation; and

2. The pipeline qualifies for use under this regulation in accordance with Section 1(8) of this regulation.

(b) No person may operate a pipeline segment [of pipeline that is] replaced, relocated, or otherwise changed after November 12, 1970, unless that replacement, relocation, or change has been made in accordance with this regulation.

(c) Each utility shall establish and then maintain[, modify as appropriate, and follow the] plans, procedures and programs as [that it is] required [to establish] under this regulation.

(8) Conversion to service subject to this regulation.

[(a) A] Steel pipeline previously used in service not subject to this regulation qualifies for use under this regulation if the utility prepares and follows a written procedure to carry out the following requirements:

1. The design, construction, operation, and maintenance history of the pipeline shall [must] be reviewed and, where sufficient historical records are not available, appropriate tests shall [must] be performed to determine if the pipeline is in a satisfactory condition for safe

operation.

2. The pipeline right-of-way, all aboveground segments of [the] pipeline, and appropriately selected underground segments must be visually inspected for physical defects and operating conditions which reasonably could be expected to impair the strength or tightness of the pipeline.

3. All known unsafe defects and conditions shall [must] be corrected in accordance with this regulation.

4. The pipeline must be tested in accordance with Section 11 of this regulation to substantiate [the] maximum allowable operating pressure permitted by Section 13 of this regulation.

5. Each utility shall [must] keep for the life of the pipeline a record of [the] investigations, tests, repairs, replacements, and alterations made under the requirements of paragraph (a) of this subsection.

[(9) Rules of regulatory construction.]

[(a) As used in this regulation:]

[1. "Includes" means including but not limited to.]

[2. "May" means "is permitted to" or "is authorized to."]

[3. "May not" means "is not permitted to" or "is not authorized to."]

[4. "Shall" is used in the mandatory and imperative sense.]

[(b) In this regulation:]

[1. Words importing the singular include the plural;]

[2. Words importing the plural include the singular; and]

[3. Words importing the masculine gender include the feminine.]

Section 2. Materials. (1) Scope. This section prescribes minimum requirements for [the] selection and qualification of pipe and components for use in pipelines.

(2) General. Materials for pipe and components shall [must] be:

(a) Able to maintain the structural integrity of the pipeline under temperature and other anticipated environmental conditions [that may be anticipated];

(b) Chemically compatible with any gas that they transport and with any other material in the pipeline with which they are in contact; and

(c) Qualified in accordance with [the] applicable requirements of this section.

(3) Steel pipe.

(a) New steel pipe is qualified for use under this regulation if:

1. It was manufactured in accordance with a listed specification;

2. It meets the requirements of:

a. Section II of Appendix B to this regulation; or

b. If it was manufactured before November 12, 1970, either Section II or III of Appendix B to this regulation; or

3. It is used in accordance with paragraph (c) or (d) of this subsection.

(b) Used steel pipe is qualified for use under this regulation if:

1. It was manufactured in accordance with a listed specification and it meets the requirements of Section II-C of Appendix B to this regulation;

2. It meets the requirements of:

a. Section II of Appendix B to this regulation;

b. If it was manufactured before November 12, 1970, either Section II or III of Appendix B to this regulation;

3. It has been used in an existing line of [the] same or higher pressure and meets the requirements of Section II-C of Appendix B to this regulation; or

4. It is used in accordance with paragraph (c) of this subsection.

(c) New or used pipe may be used at a pressure resulting in a hoop stress of less than 6,000 psi where no close coiling of close bending is to be done, if visual examination indicates that the [that] pipe is in good condition and [that it] is free of split seams and other defects that would cause leakage. If it is to be welded, steel pipe [that has] not [been] manufactured to a listed specification shall [must] also pass the weldability tests prescribed in Section II-B of Appendix B to this regulation.

(d) Unused steel pipe [that has not been previously used may be used as replacement pipe in a segment of pipeline if it has been] manufactured before [prior to] November 12, 1970, may be used as replacement pipe if it meets the same specifications as [in accordance with the same specifications as] the pipe used in constructing that segment of pipeline.

(e) New steel pipe that has been cold expanded shall [must] comply with the mandatory provisions of API Standard 5LX.

(f) New or used pipe of unknown specifications and all used pipe, the strength of which is impaired by corrosion or other deterioration, shall be retested hydrostatically either length by length in a mill type test or in the field after installation before placed in service, and the test pressure used shall establish [the] maximum allowable operating pressure.

[(4) Cast iron or ductile iron pipe.]

[(a) New cast iron or new ductile iron pipe is qualified for use under this regulation if it has been manufactured in accordance with a listed specification.]

[(b) Used cast iron or used ductile pipe is qualified for use under this regulation if inspection shows that the pipe is sound and allows the make up of tight joints and:]

[1. It has been removed from an existing pipeline that operated at the same or higher pressure; or]

[2. It was manufactured in accordance with a listed specification.]

(4) [(5)] Plastic pipe.

(a) New plastic pipe is qualified for use under this regulation if:

1. [When the pipe is manufactured,] It is manufactured in accordance with a [the latest] listed [edition of a listed] specification[, except that before March 21, 1975, it may be manufactured in accordance with any listed edition of a listed specification]; and

2. It is resistant to chemicals with which contact may be anticipated.

(b) Used plastic pipe is qualified for use under this regulation if:

1. [When the pipe is manufactured,] It is manufactured in accordance with a [the latest] listed [edition of a listed] specification[, except that pipe manufactured before March 21, 1985, need only have met the requirements of any listed edition of a listed specification];

2. It is resistant to chemicals with which contact may be anticipated;

3. It has been used only in natural gas service;

4. Its dimensions are still within the tolerance of the specification to which it was manufactured; and

5. It is free of visible defects.

(c) For the purpose of paragraphs (a)1 and (b)1 of this subsection, where pipe of a diameter included in a listed specification is impractical to use, pipe of a diameter between the sizes included in a listed specification may be used if it:

1. Meets [the] strength and design criteria required of pipe included in that listed specification; and

2. Is manufactured from plastic compounds which meet [the] criteria for material required of pipe included in that listed specification.

[(6) Copper pipe. Copper pipe is qualified for use under this regulation if it has been manufactured in accordance with a listed specification.]

(5) [(7)] Marking of materials.

(a) Except as provided in paragraph (d) [(e)] of this subsection, each valve, fitting, length of pipe, and other components shall [must] be marked as prescribed in:

1. The specification or standard to which it was manufactured; or

2. To indicate size, material, manufacturer, pressure rating, temperature rating and, as appropriate, type, grade and model. [MSS Standard Practice, SP-25.]

[(b) In addition to the requirements in paragraph (a) of this subsection, thermoplastic pipe manufactured in accordance with the 1974a or earlier listed edition of ASTM D2513 must be marked as required by section 9.2 of ASTM D2513 (1975b edition) unless the pipe was manufactured before May 18, 1978, and is installed where operating temperatures are not above thirty-eight (38) degrees Centigrade (100° F).]

(b) [(c)] Surfaces of pipe and components that are subject to stress from internal pressure shall [may] not be field die stamped.

(c) [(d)] If any item is marked by die stamping, the die shall [must] have blunt or rounded edges that will minimize stress concentrations.

(d) [(e)] Paragraph (a) of this subsection does not apply to items manufactured before November 12, 1970, that meet all of the following:

1. [The] Item is identifiable as to type, manufacturer, and model.

2. Specifications or standards giving pressure, temperature, and other appropriate criteria for [the] use of items are readily available.

(6) [(8)] Transportation of pipe. In a pipeline to be operated at a hoop stress of twenty (20) percent or more of SMYS, [an] operator shall [may] not use pipe having [an] outer diameter to wall thickness ratio of seventy to one (70 to 1), or more, which [than] is transported by railroad unless:

(a) [The] Transportation is performed in accordance with the most recent [1972] edition of API RP5L1, except that before February 25, 1975, [the] transportation may have been performed in accordance with the 1967 edition of API RP5L1.

(b) In the case of pipe transported before November 12, 1970, the pipe is tested in accordance with Section 11 of this regulation to at least one and one-fourth (1.25) times [the] maximum allowable operating pressure if it is to be installed in a Class 1 location, and to at least one and one-half (1.5) times [the] maximum allowable operating pressure if it is to be installed in a Class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Section 11 of this regulation, [the] test pressure must be maintained for at least eight (8) hours.

Section 3. Pipe Design. (1) Scope. This section prescribes [the] minimum requirements for [the] design of pipe.

(2) General. Pipe shall [must] be designed with sufficient wall thickness, or shall [must] be installed with adequate protection, to withstand anticipated external pressures and loads that will be imposed on [the] pipe after installation.

(3) Design formula for steel pipe.

(a) [The] Design pressure for steel pipe is determined in accordance with the following formula:

$$P = (2St/D) \times F \times E \times T$$

P = Design pressure in pounds per square inch gauge.

S = Yield strength in pounds per square inch determined in accordance with subsection (4) of this section.

D = Nominal outside diameter of [the] pipe in inches.

t = Nominal wall thickness of [the] pipe in inches. If this is unknown, it is determined in accordance with subsection (5) of this section. Additional wall thickness required for concurrent external loads in accordance with subsection (2) of this section shall [may] not be included in computing design pressure.

F = Design factor determined in accordance with subsection (6) of this section.

E = Longitudinal joint factor determined in accordance with subsection (7) of this section.

T = Temperature derating factor determined in accordance with subsection (8) of this section.

(b) If steel pipe that has been subjected to cold expansion [worked] to meet the SMYS is subsequently heated, other than by welding or stress relieving as part of welding [, to 600°F or more, the] design pressure is limited to seventy-five (75) percent of the pressure determined under paragraph (a) of this subsection if temperature of pipe exceeds 900°-F (482°-C) at any time or is held above 600°-F (316°-C) for more than one (1) hour.

(4) Yield strength (s) for steel pipe.

(a) For pipe [that is] manufactured in accordance with a specification listed in Section I of Appendix B of this regulation, [the] yield strength to be used in the design formula in subsection (3) of this section is the SMYS stated in the listed specification, if that value is known.

(b) For pipe [that is] manufactured in accordance with a specification not listed in Section I of Appendix B to this regulation or whose specification or tensile properties are unknown, [the] yield strength to be used in the design formula in subsection (3) of this section is one of the following:

1. If [the] pipe is tensile tested in accordance with Section II-D of Appendix B to this regulation, the lower of the following:

a. Eighty (80) percent of [the] average yield strength determined by [the] tensile tests; or [.]

b. The lowest yield strength determined by

[the] tensile tests, but no more than 52,000 psig.

2. If [the] pipe is not tensile tested as provided in paragraph (b)1 of this subsection, 24,000 psig.

(5) Nominal wall thickness (t) for steel pipe.

(a) If [the] nominal wall thickness for steel pipe is not known, it is determined by measuring the thickness of each piece of pipe at quarter points on one (1) end.

(b) However, if [the] pipe is of uniform grade, size and thickness and there are more than ten (10) lengths, only ten (10) percent of the individual lengths, but not less than ten (10) lengths, need be measured. [The] Thickness of [the] lengths [that are] not measured shall [must] be verified by applying a gauge set to the minimum thickness found by [the] measurement. [The] Nominal wall thickness to be used in the design formula in subsection (3) of this section is the next wall thickness found in commercial specifications that is below the average of all [the] measurements taken. However, [the] nominal wall thickness used shall [may] not be more than 1.14 times the smallest measurement taken on pipe less than twenty (20) inches in outside diameter, nor more than 1.11 times the smallest measurement taken on pipe twenty (20) inches or more in outside diameter.

(6) Design factor (F) for steel pipe.

(a) Except as otherwise provided in paragraphs (b), (c), and (d) of this subsection, the design factor to be used in the design formula in subsection (3) of this section is determined in accordance with the following table:

Class Location	Design Factor (F)
1	0.72
2	0.60
3	0.50
4	0.40

(b) A design factor of six-tenths (0.60) or less shall [must] be used in the design formula in subsection (3) of this section, for steel pipe in Class 1 locations that:

1. Cross the right-of-way of an unimproved public road, without a casing;

2. Cross without a casing, or makes a parallel encroachment on, the right-of-way of either a hard surfaced road, highway, public street, or railroad;

3. Are supported by a vehicular, pedestrian, railroad, or pipeline bridge; or

4. Are used in a fabricated assembly (including separators, mainline valve assemblies, cross-connections, and river crossing headers) or are used within five (5) pipe diameters in any direction from the last fitting of a fabricated assembly, other than a transition piece of an elbow used in place of a pipe bend [which is] not associated with a fabricated assembly.

(c) For Class 2 locations, a design factor of five-tenths (0.50) or less shall [must] be used in the design formula in subsection (3) of this section for uncased steel pipe that crosses the right-of-way of a hard surfaced road, highway, public street or railroad.

(d) For Class 1 and Class 2 locations, a design factor of five-tenths (0.50) or less shall [must] be used in the design formula in subsection (3) of this section for:

1. Steel pipe in a compressor station, regulating station, or measuring station; and

2. Steel pipe, including a pipe riser, on a platform located offshore or in inland navigable waters.

(7) Longitudinal joint factor (E) for steel pipe. [The] Longitudinal joint factor to be used in the design formula in subsection (3) of this section is determined in accordance with the following table:

Specification	Pipe Class	Longitudinal Joint Factor (E)
ASTM A 53	Seamless	1.00
	Electric resistance welded	1.00
	Furnace butt welded	.60
ASTM A 106	Seamless	1.00
[ASTM A 134	Electric fusion arc welded	.80]
[ASTM A 135	Electric resistance welded	1.00]
[ASTM A 139	Electric fusion arc welded	.80]
[ASTM A 211	Spiral welded steel pipe	.80]
ASTM A 333	Seamless	1.00
	Electric resistance welded	1.00
ASTM A 381	Double submerged arc welded	1.00
ASTM A 671	Electric fusion welded	1.00
ASTM A 672	Electric fusion welded	1.00
ASTM A 691	Electric fusion welded	1.00
API 5L	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Submerged arc welded	1.00
[API 5LX	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Submerged arc welded	1.00
	Furnace butt welded	.60]
[API 5LS	Electric resistance welded	1.00
	Submerged arc welded	1.00]
Other	Pipe over 4 inches	.80
Other	Pipe 4 inches or less	.60

If the type of longitudinal joint cannot be determined, the joint factor to be used shall [must] not exceed that designated for "Other."

(8) Temperature derating factor (T) for steel pipe. [The] Temperature derating factor to be used in the design formula in subsection (3) of this section is determined as follows:

Gas temperature in degrees Fahrenheit	Temperature derating factor (T)
250 or less	1.000
300	0.967
350	0.933
400	0.900
450	0.867

For intermediate gas temperatures, [the] derating factor is determined by interpolation.

[(9) Design of cast iron pipe. Cast iron pipe must be designed in accordance with ANSI C101-67.]

[(10) Design of ductile iron pipe.]

[(a) Ductile iron pipe must be designed in accordance with ANSI A21.50 using the following values in the design equations:]

[s(design hoop stress) = 16,800 p.s.i.
f(design bending stress) = 36,000 p.s.i.]

[(b) Ductile iron pipe must be grade (60-42-10) and must conform to the requirements of ANSI A21.52.]

(9) [(11)] Design of plastic pipe. [The] Design pressure for plastic pipe is determined in accordance with the following formula, subject to the limitations of subsection (10) [(12)] of this section:

$$P = 2S \frac{t}{(D-t)} \times 0.32$$

P = Design pressure, gauge, kPa (psi).

S = For thermoplastic pipe the long-term hydrostatic strength determined in accordance with the listed specification at a temperature equal to twenty-three (23) degrees Centigrade (seventy-three (73) degrees Fahrenheit), thirty-eight (38) degrees Centigrade (100 degrees Fahrenheit), forty-nine (49) degrees Centigrade (120 degrees Fahrenheit), or sixty (60) degrees Centigrade (140 degrees Fahrenheit): for reinforced thermosetting plastic pipe, 75,800 kPa (11,000 psig).

t = Specified wall thickness, mm (in.).

D = Specified outside diameter, mm (in.).

(10) [(12)] Design limitations for plastic pipe.

(a) [The] Design pressure shall [may] not exceed [a] gauge pressure of 689 kPa (100 psig) for plastic pipe used in:

1. Distribution systems; or
2. Classes 3 and 4 locations.

(b) Plastic pipe shall [may] not be used where operating temperature of [the] pipe will be:

1. Below minus twenty-nine (29) degrees Centigrade (minus twenty (20) degrees Fahrenheit); or
2. In the case of thermoplastic pipe, above the temperature at which the long-term hydrostatic strength used in the design formula under subsection (9) [(11)] of this section is determined, except that pipe manufactured before May 18, 1978, may be used at temperatures up to thirty-eight (38) degrees Centigrade (100°F); or in the case of reinforced thermosetting plastic pipe, above sixty-six (66) degrees Centigrade (150°F).

(c) [The] Wall thickness for thermoplastic pipe shall [may] not be less than 1.57 millimeters (0.062 in.).

(d) [The] Wall thickness for reinforced thermosetting plastic pipe shall [may] not be less than that listed in the following table:

Nominal size in inches:	Minimum wall thickness millimeters (inches)
2	1.52 (0.060)
3	1.52 (0.060)
4	1.78 (0.070)
5	2.54 (0.100)

(11) [(13)] Design of copper pipe.

(a) Copper pipe used in mains shall [must] have a minimum wall thickness 0.065 inches and shall [must] be hard drawn.

(b) Copper pipe used in service lines shall [must] have a [minimum] wall thickness than that indicated in the following table: [as specified for type "L" pipe in ASTM B 88.]

Standard size (inch)	Nominal O.D. (inch)	Wall thickness (inch) Nominal	Tolerance
1/2	.625	.040	.0035
5/8	.750	.042	.0035
3/4	.875	.045	.004
1	1.125	.050	.004
1 1/4	1.375	.055	.0045
1 1/2	1.625	.060	.0045

(c) Copper pipe used in mains and service lines shall [may] not be used at pressures in excess of 100 psig.

(d) Copper pipe that does not have an internal corrosion resistant lining shall [may] not be used to carry gas that has an average hydrogen sulfide content of more than three-tenths (0.3) grains per 100 standard cubic feet of gas.

Section 4. Design of Pipeline Components. (1) Scope. This section prescribes minimum requirements for [the] design and installation of pipeline components and facilities, and [. In addition,] it prescribes requirements relating to protection against accidental overpressuring.

(2) General requirements. Each component of a pipeline shall [must be able to] withstand operating pressures and other anticipated loadings without impairment of serviceability with unit stresses equivalent to those allowed for comparable material in pipe in the same location and kind of service. However, if design based upon unit stress is impractical for a particular component, design may be based upon a pressure rating established by the manufacturer by pressure testing that component or a prototype of the component.

(3) Qualifying metallic components. Notwithstanding any requirement of this section which incorporates by reference an edition of a document listed in Appendix A of this regulation, a metallic component manufactured in accordance with any other edition of that document is qualified for use under this regulation if:

(a) It can be shown through visual inspection of the cleaned component that no defect exists which might impair the strength or tightness of the component; and

(b) The edition of the document under which the component was manufactured has equal or more stringent requirements for the following as an edition of that document currently or previously listed in Appendix A:

1. Pressure testing;
2. Materials; and
3. Pressure and temperature ratings.

(4) Valves.

(a) Except for cast iron and plastic valves, each valve shall meet the minimum requirements, or equivalent, of API 6D. A valve shall not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those requirements.

(b) Each cast iron and plastic valve shall comply with the followiong:

1. The valve shall have a maximum service pressure rating for temperatures that equal or exceed maximum service temperature.

2. The valve shall be tested as part of the manufacturing, as follows:

a. With the valve fully open, the shell shall be tested with no leakage to a pressure at least one and one-half (1.5) times the maximum service rating.

b. After the shell test, the seat shall be tested to a pressure not less than one and one-half (1.5) times the maximum service pressure rating. Except for swing check valves, test pressure during the seat test shall be applied successively on each side of the closed valve with the opposite side open. No visible leakage is permitted.

c. After the last pressure test is completed, the valve shall be operated through its full travel to demonstrate freedom from interference. [Each valve must meet the minimum requirements, or the equivalent, of API 6A, API 6D, MSS SP-70, MSS SO-71, or MSS SP-78. A valve may not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those standards.]

(c) [(b)] Each valve shall [must] be able to meet [the] anticipated operating conditions.

(d) [(c)] No valve having shell components made of ductile iron may be used at pressures exceeding eighty (80) percent of [the] pressure ratings for comparable steel valves at their listed temperatures. However, a valve having shell components made of ductile iron may be used at pressures up to eighty (80) percent of [the] pressure ratings for comparable steel valves at their listed temperatures, if:

1. [The] Temperature-adjusted service pressure does not exceed 1,000 psig; and

2. Welding is not used on any ductile iron component in the fabrication of the valve shells or their assembly.

(e) [(d)] No valve having pressure containing parts made of ductile iron may be used in [the] gas pipe components of compressor stations.

(5) Flanges and flange accessories.

(a) [General requirements.] Each flange or flange accessory (other than cast iron) shall [must] meet the minimum requirements of ANSI B16.5, MSS SP-44, [or ANSI B16.24,] or [the] equivalent.

(b) Each flange assembly shall [must be able to] withstand the maximum pressure at which the pipeline is to be operated and [to] maintain its physical and chemical properties at any anticipated temperature [to which it is anticipated that it might be subjected in service].

(c) Each flange on a flanged joint in cast iron pipe must conform in dimensions, drilling, face and gasket design to ANSI B16.1 and be cast integrally with the pipe, valve or fitting.

(6) Standard fittings.

(a) [The] Minimum metal thickness of threaded fittings shall [may] not be less than specified for [the] pressures and temperatures in [the] applicable standards referenced in this regulation, or their equivalent.

(b) Each steel butt-welding fitting shall [must] have pressure and temperature ratings based on stresses for pipe of [the] same or equivalent material. [The] Actual bursting strength of the fitting must at least equal the computed bursting strength of pipe of the designated material and wall thickness, as determined by a prototype [that was] tested to at least the pressure required for the pipeline to which it is being added.

(7) Tapping.

(a) Each mechanical fitting used to make a hot tap shall [must] be designed for at least [the] operating pressure of the pipeline.

(b) Where [a] ductile iron pipe is tapped, the extent of full-threaded engagement and [the] need for [the] use of outside-sealing service connections, tapping saddles, or other fixtures shall [must] be determined by service conditions.

(c) Where a threaded tap is made in cast iron or ductile iron pipe, [the] diameter of the tapped hole shall [may] not be more than twenty-five (25) percent of the nominal diameter of the pipe unless the pipe is reinforced, except that:

1. Existing taps may be used for replacement service, if they are free of cracks and have good threads; and

2. A one and one-fourth (1 1/4) inch tap may be made in a four (4) inch cast iron or ductile iron pipe, without reinforcement.

However, in areas where climate, soil, and service conditions may create unusual external stresses on cast iron pipe, unreinforced taps may be used only on six (6) inch or larger pipes.

(8) Components fabricated by welding.

(a) Except for branch connections and assemblies of standard pipe and fittings joined by circumferential welds, [the] design pressure of each component fabricated by welding, whose strength cannot be determined, shall [must] be established in accordance with paragraph UG-101 of Section VIII of the ASME Boiler and Pressure Vessel Code.

(b) Each prefabricated unit that uses plate and longitudinal seams shall [must] be designed, constructed, and tested in accordance with ASME Boiler and Pressure Vessel Code, except for the following:

1. Regularly manufactured butt-welding fittings.

2. Pipe [that has been] produced and tested under a specification listed in Appendix B to this regulation [part].

3. Partial assemblies such as split rings or collars.

4. Prefabricated units that the manufacturer certifies have been tested to at least twice the anticipated maximum pressure [to which they will be subjected] under [the anticipated] operating conditions.

(c) Orange peel bull plugs and orange peel swages shall [may] not be used on pipelines that are to operate at [a] hoop stress of twenty (20) percent or more of [the] SMYS of the pipe.

(d) Except for flat closures designed in accordance with section VIII of the ASME Boiler and Pressure Vessel Code, flat closures and fish tails shall [may] not be used on pipe that either operates at 100 psig, or more, or is more than three (3) inches nominal diameter.

(9) Welded branch connections. Each welded branch connection made to pipe in the form of a single connection, or in a header or manifold as a series of connections, shall [must] be designed to ensure that [the] strength of the pipeline system is not reduced, taking into account [the] stresses in the remaining pipe wall due to the opening in the pipe or header, [the] shear stresses produced by [the] pressure acting on the area of the branch opening, and any external loadings due to thermal movement,

weight, and vibration.

(10) Extruded outlets. Each extruded outlet shall [must] be suitable for anticipated service conditions and shall [must] be at least equal to [the] design strength of the pipe and other fittings in the pipeline to which it is attached.

(11) Flexibility. Each pipeline shall [must] be designed with enough flexibility to prevent thermal expansion or contraction from causing excessive stresses in [the] pipe or components, excessive bending or unusual loads at joints, or undesirable forces or moments at points of connection to equipment, or at anchorage or guide points.

(12) Supports and anchors.

(a) Each pipeline and its associated equipment shall [must] have enough anchors or supports to:

1. Prevent undue strain on connected equipment;

2. Resist longitudinal forces caused by a bend or offset in the pipe; and

3. Prevent or damp out excessive vibration.

(b) Each exposed pipeline shall [must] have enough supports or anchors to protect the exposed pipe joints from [the] maximum end force caused by internal pressure and any additional forces caused by temperature expansion or contraction or by [the] weight of the pipe and its contents.

(c) Each support or anchor on an exposed pipeline shall [must] be made of durable, noncombustible material and shall [must] be designed and installed as follows:

1. Free expansion and contraction of the pipeline between supports or anchors shall [may] not be restricted.

2. Provision shall [must] be made for [the] service conditions involved.

3. Movement of the pipeline shall [may] not cause disengagement of [the] support equipment.

(d) Each support on an exposed pipeline operated at a stress level of fifty (50) percent of more of SMYS shall [must] comply with the following:

1. A structural support shall [may] not be welded directly to the pipe.

2. The support shall [must] be provided by a member that completely encircles the pipe.

3. If an encircling member is welded to a pipe, the weld shall [must] be continuous and cover the entire circumference.

(e) Each underground pipeline [that is] connected to a relatively unyielding line or other fixed object shall [must] have enough flexibility to provide for possible movement, or it shall [must] have an anchor that will limit [the] movement of the pipeline.

(f) Except for offshore pipelines each underground pipeline [that is] being connected to new branches shall [must] have firm foundation for both the header and [the] branch to prevent detrimental lateral and vertical movement.

(13) Compressor stations: design and construction.

(a) Location of compressor building. Except for a compressor building on a platform in inland navigable waters, each main compressor building of a compressor station shall [must] be located on property under the operator's control [of the operator]. It shall [must] be far enough away from adjacent property, not under control of the operator, to minimize the possibility of fire being transferred [communicated] to the compressor building from structures on adjacent property. There shall [must] be enough open space around the main compressor building to allow [the] free movement of firefighting equipment.

(b) Building construction. Each building on a compressor station site shall [must] be made of noncombustible materials if it contains either:

1. Pipe that is more than two (2) inches in diameter and [that is] carrying gas under pressure; and

2. Gas handling equipment other than gas utilization equipment used for domestic purposes.

(c) Exits. Each operating floor of a main compressor building shall [must] have at least two (2) separated and unobstructed exits located [so as] to provide a convenient possibility of escape and [an] unobstructed passage to [a place of] safety. Each exit door latch shall [on an exit must] be of a type which can be readily opened from [the] inside without a key. Each swinging door located in an exterior wall shall [must] be mounted to swing outward.

(d) Fenced areas. Each fence around a compressor station shall [must] have at least two (2) gates located [so as] to provide [a] convenient opportunity for escape to [a place of] safety, or have other facilities affording a similarly convenient exit from the area. Each gate located within 200 feet of any compressor plant building shall [must] open outward and, when occupied, shall be of a type that can be readily opened from inside without a key [must be openable from the inside without a key].

(e) Electrical areas. Electrical equipment and wiring installed in compressor stations shall [must] conform to the National Electrical Code, NFPA-70(ANSI), so far as that code is applicable.

(f) Air piping system.

1. All air piping within gas compressing stations shall be constructed in accordance with Section 2 of the USAS B31.1 Code for Pressure Piping.

2. [The] Starting air pressure, storage volume and size of connection piping shall be adequate to rotate the engine at [the] cranking speed and for the number of revolutions necessary to purge [the] fuel gas from the power cylinder and muffler. [The] Recommendations of the engine manufacturer may be used as a guide in determining these factors. Consideration should be given to the number of engines installed and to the possibility of [having to] starting several of these engines within a short period of time.

3. A check valve shall be installed in the starting air line near each engine to prevent backflow from the engine into the piping system. A check valve shall also be placed in the main air line on the immediate outlet side of the air tank or tanks. It is recommended that equipment for cooling [the] air and removing [the] moisture and entrained oil be installed between the starting air compressor and [the] air storage tanks.

4. Suitable provision shall be made to prevent starting air from entering [the] power cylinders of an engine and activating moving parts while work is in progress on the engine or on equipment driven by the engines. Acceptable means of accomplishing this are installation of a blind flange, removal of a portion of the air supply piping or locking closed a stop valve and locking open a vent downstream from it.

(g) Air receivers. Air receivers or air storage bottles, for use in compressor stations, shall be constructed and equipped in accordance

with Section VII, Unfired Pressure Vessels, of the ASME Boiler and Pressure Vessel Code.

(h) Lubricating oil piping. All lubricating oil piping with gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B 31.3.

(i) Water and steam piping. All water and steam piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Power Piping, USAS B31.0.0.

(j) Hydraulic piping. All hydraulic power piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B31.3.

(14) Compressor stations; liquid removal.

(a) Where entrained vapors in gas may liquefy under [the] anticipated pressure and temperature conditions, the compressor shall [must] be protected against [the] introduction of those liquids in damaging quantities [that could cause damage].

(b) Each liquid separator used to remove entrained liquids at a compressor station shall [must]:

1. Have a manually operable means of removing these liquids.

2. Where slugs of liquid could be carried into the compressors, have either automatic liquid removal facilities, [an] automatic compressor shutdown device, or [a] high liquid level alarm; and

3. Be manufactured in accordance with Section VIII of the ASME Boiler and Pressure Vessel Code, except that liquid separators constructed of pipe and fittings without internal welding shall [must] be fabricated with a design factor of four-tenths (0.4) or less.

(15) Compressor stations: emergency shutdowns.

(a) Except for unattended field compressor stations of 1,000 horsepower or less, each compressor station shall [must] have an emergency shutdown system that can do [meets] the following:

1. [It must be able to] Block gas out of the station and blow down the station piping.

2. [It must] Discharge gas from the blowdown piping at a location where [the] gas will not create a hazard.

3. [It must] Provide means for [the] shutdown of gas compressing equipment, gas fires, and electrical facilities in the vicinity of gas headers and in the compressor building, except, that:

a. Electric circuits that supply emergency lighting required to assist station personnel in evacuating the compressor building and the area in the vicinity of the gas headers shall [must] remain energized; and

b. Electrical circuits needed to protect equipment from damage may remain energized.

4. It shall [must] be operable from at least two (2) locations, each of which is:

a. Outside the gas area of the station;

b. Near the exit gates, if [the] station is fenced; or near emergency exits, if not fenced; and

c. Not more than 500 feet from the limits of the stations.

(b) If a compressor station supplies gas directly to a distribution system with no other adequate source of gas available, the emergency shutdown system shall [must] be designed to prevent [so that it will not] function at the wrong time and [cause an] unintended outage on the distribution system.

(c) On a platform located in inland navigable waters, the emergency shutdown system shall [must] be designed and installed to actuate automatically by each of the following events:

1. In the case of an unattended compressor station:

a. When [the] gas pressure equals [the] maximum allowable operating pressure plus fifteen (15) percent; or

b. When [an] uncontrolled fire occurs on the platform; and

2. In the case of a compressor station in a building:

a. When [an] uncontrolled fire occurs in the building; or

b. When the concentration of gas in air reaches fifty (50) percent or more of the lower explosive limit in a building which has a source of ignition.

For the purpose of paragraph (c)2 of this subsection, an electrical facility which conforms to Class 1, Group D of the National Electrical Code is not a source of ignition.

3. All emergency valves and controls shall be identified by signs. All important gas pressure piping shall be identified by signs or color codes as to their function.

(16) Compressor stations: pressure limiting devices.

(a) Each compressor station shall [must] have pressure relief or other suitable protective devices of sufficient capacity and sensitivity to ensure that [the] maximum allowable operating pressure of [the] station piping and equipment is not exceeded by more than ten (10) percent.

(b) Each vent line that exhausts gas from the pressure relief valve of a compressor station shall [must] extend to a location where [the] gas may be discharged without hazard.

(17) Compressor stations: additional safety equipment.

(a) Each compressor station shall [must] have adequate fire protection facilities. If fire pumps are a part of these facilities, their operation shall [may] not be affected by the emergency shutdown system.

(b) Each compressor station prime mover, other than an electrical induction or synchronous motor, shall [must] have an automatic device to shut down the unit before the speed of either the prime mover or [the] driven unit exceeds maximum safe speed.

(c) Each compressor unit in a compressor station shall [must] have a shutdown or alarm device that operates in the event of inadequate cooling or lubrication of the unit.

(d) Each compressor station gas engine that operates with pressure gas injection shall [must] be equipped so that stoppage of the engine automatically shuts off [the] fuel and vents the engine distribution manifold.

(e) Each muffler for a gas engine in a compressor station shall [must] have vent slots or holes in the baffles of each compartment to prevent gas from being trapped in the muffler.

(f) [All] Fuel gas lines within a compressor station, serving [the] various buildings and residential areas, shall be provided with master shutoff valves located outside of any building or residential area.

(18) Compressor stations: ventilation. Each compressor station building shall [must] be

ventilated to ensure that employees are not endangered by [the] accumulation of gas in rooms, sumps, attics, pits, or other enclosed places.

(19) Pipe-type and bottle-type holders.

(a) Each pipe-type and bottle-type holder shall [must] be designed [so as] to prevent [the] accumulation of liquids in the holder, [in] connecting pipe, or [in] auxiliary equipment, that might cause corrosion or interfere with [the] safe operation of the holder.

(b) Each pipe-type or bottle-type holder shall [must] have minimum clearance from other holders in accordance with the following formula:

$$C = (3D \times P \times F)/1,000$$

in which:

C = Minimum clearance between pipe containers or bottles in inches.

D = Outside diameter of pipe containers or bottles in inches.

P = Maximum allowable operating pressure, psig.

F = Design factor as set forth in Section 3(6) of this regulation.

(20) Additional provisions for bottle-type holders.

(a) Each bottle-type holder shall [must] be:

1. Located on a [storage] site entirely surrounded by fencing that prevents access by unauthorized persons and with minimum clearance from [the] fences as follows:

Maximum allowable Operating pressure	Minimum clearance (feet)
Less than 1,000 psig	25
1,000 psig or more	100

2. Designed using the design factors set forth in Section 3(6) of this regulation; and

3. Buried with [a] minimum cover in accordance with Section 7(13) of this regulation.

(b) Each bottle-type holder manufactured from steel [that is] not weldable under field conditions shall [must] comply with the following:

1. A bottle-type holder made from alloy steel shall [must] meet the chemical and tensile requirements for [the] various grades of steel in [either API Standard 5A or] ASTM A 372.

2. [The] Actual yield-tensile ratio of [the] steel shall [may] not exceed 0.85.

3. Welding shall [may] not be performed on the holder after it has been heat treated or stress relieved, except that copper wires may be attached to the small diameter portion of the bottle end closure for cathodic protection if a localized thermal welding process is used.

4. The holder shall [must] be given a mill hydrostatic test at [a] pressure that produces [a] hoop stress at least equal to eighty-five (85) percent of [the] SMYS.

5. The holder, connection pipe, and components shall [must] be leak tested after installation as required by Section 11 of this regulation.

(21) Transmission line valves.

(a) Each transmission line shall [must] have sectionalizing block valves spaced as follows:

1. Each point on the pipeline in a Class 4 location shall [must] be within two and one-half (2 1/2) miles of a valve.

2. Each point on the pipeline in a Class 3 location shall [must] be within four (4) miles of a valve.

3. Each point on the pipeline in a Class 2 location shall [must] be within seven and one-half (7 1/2) miles of a valve.

4. Each point on the pipeline in a Class 1 location shall [must] be within ten (10) miles of a valve.

(b) Each sectionalizing block valve on a transmission line shall [must] comply with the following:

1. The valve and [the] operating device to open or close the valve shall [must] be readily accessible and protected from tampering and damage.

2. The valve shall [must] be supported to prevent settling of [the] valve or movement of the pipe to which it is attached.

(c) Each section of [a] transmission line between main line valves shall [must] have a blowdown valve with enough capacity to allow the transmission line to be blown down as rapidly as practicable. Each blowdown discharge must be located so [the] gas can be blown to the atmosphere without hazard and, if the transmission line is adjacent to an overhead electric line, so that [the] gas is directed away from the electrical conductors.

(22) Distribution line valves.

(a) Each high-pressure distribution system shall [must] have valves spaced [so as] to reduce the time to shut down a section of main in an emergency. [The] Valve spacing is determined by [the] operating pressure, [the] size of [the] mains, and [the] local physical conditions.

(b) Each valve on a main installed for operating or emergency purposes shall [must comply with the following:]

[1. The valve must] be placed in a readily accessible location [so as] to facilitate its operation in an emergency, and its [.

2. The] operating stem or mechanism shall [must] be readily accessible.

[3.] If the valve is installed in a buried box or enclosure, the box or enclosure shall [must] be installed [so as] to avoid transmitting external loads to the main.

(23) Valves at regulator stations.

(a) Each regulator station controlling [the] flow or pressure of gas in a distribution system shall [must] have a valve installed on the inlet piping at a distance from the regulator station sufficient to permit [the] operation of the valve during an emergency that might preclude access to the station.

(b) Exterior shutoff valves shall be installed on all lines entering and leaving regulator stations for use in an emergency to stop gas flow [the flow of gas]. Such valves shall be installed at an accessible [point and] location where they can be operated in [case of] an emergency.

1. [The] Exterior shutoff valves shall [must] be located a minimum of forty (40) feet from the regulator station if [the] inlet pressure to the station is 100 psig or less. [The] Valves shall be located a minimum of 100 feet from the regulator station if [the] inlet pressure is more than 100 psig.

2. A check valve may be used in lieu of an exterior shutoff valve on [the] downstream piping if located a minimum of forty (40) feet from the regulator station.

3. The exterior shutoff valve may be a sectionalizing valve.

4. All exterior shutoff valves shall be inspected and partially operated at least once each calendar year at intervals not to exceed fifteen (15) months[; but at least once each calendar year].

(24) Vaults: structural design requirements.

(a) Each underground vault or pit for valves, pressure relieving, pressure limiting, or pressure regulating stations shall [must be able to] meet the loads which may be imposed upon it, and to protect installed equipment.

(b) There shall [must] be enough working space so that all [of the] equipment required in the vault or pit can be properly installed, operated, and maintained.

(c) Each pipe entering, or within, a regulator vault or pit shall [must] be steel for sizes ten (10) inches, and less, except that control and gauge piping may be copper. Where pipe extends through the vault or pit structure, provision shall [must] be made to prevent [the] passage of gases or liquids through the opening and to avert strains in the pipe.

(d) Vault or pit openings shall be located [so as] to minimize [the] hazards of tools or other objects falling upon the regulator, piping or other equipment. The control piping and [the] operating parts of [the] equipment installed shall not be located under a vault or pit opening where workmen can step on them when entering or leaving the vault or pit, unless such parts are suitably protected.

(e) Whenever a vault or pit opening is to be located above equipment which could be damaged by a falling cover, a circular cover shall [should] be installed or other suitable precautions taken.

(25) Vaults: accessibility. Each vault shall [must] be located in an accessible location, so far as practical, away from:

(a) Street intersections or points where traffic is heavy or dense;

(b) Points of minimum elevation, catch basins, or places where the access cover will be in the course of surface waters; and

(c) Water, electric, steam, or other facilities.

(26) Vaults: sealing, venting, and ventilation. Each underground vault or closed top pit containing either a pressure regulating or reducing station, or a pressure limiting or relieving station, shall [must] be sealed, vented or ventilated, as follows:

(a) When [the] internal volume exceeds 200 cubic feet:

1. The vault or pit shall [must] be ventilated with two (2) ducts, each having at least the ventilating effect of a pipe four (4) inches in diameter;

2. [The] Ventilation shall [must] be enough to minimize [the] formation of combustible atmosphere in the vault or pit; and

3. [The] Ducts shall [must] be high enough above grade to disperse any gas-air mixtures that might be discharged.

(b) When [the] internal volume is more than seventy-five (75) cubic feet but less than 200 cubic feet:

1. If the vault or pit is sealed, each opening shall [must] have a tight fitting cover without open holes through which an explosive mixture might be ignited, and there shall [must] be a means for testing [the] internal atmosphere before removing the cover.

2. If the vault or pit is vented, there shall [must] be a means of preventing external sources of ignition from reaching the vault atmosphere; or

3. If the vault or pit is ventilated, paragraph (a) or (c) of this subsection applies.

(c) If a vault or pit covered by paragraph (b) of this subsection is ventilated by openings in [the] covers or gratings, and the ratio of [the] internal volume, in cubic feet, to [the] effective ventilating area of the cover or grating, in square feet, is less than twenty (20) to one (1), no additional ventilation is required.

(27) Vaults: drainage and waterproofing.

(a) Each vault shall [must] be designed [so as] to minimize [the] entrance of water.

(b) A vault containing gas piping shall [may] not be connected by means of a drain connection to any other underground structure.

(c) All electrical equipment in vaults shall [must] conform to [the] applicable requirements of Class 1, Group D, of the National Electrical Code, ANSI Standard C1.

(28) Design pressure of plastic fittings.

(a) Thermosetting fittings for plastic pipe shall [must] conform to ASTM D 2517.

(b) Thermoplastic fittings for plastic pipe shall conform to ASTM D 2513. [The design pressure of acrylonitrile-butadiene-styrene (ABS) and polyvinyl chloride (PVC) Schedule 40 and 80 thermoplastic fittings must be obtained from the following table:]

[Design Pressure of Thermoplastic Fittings PSIG of Various Strengths, Materials and Class Locations

Size Inches	Schedule	ABS Type 1 and PVC Type II class location			PVC Type 1 class location		
	Class Location	1	2 and 3	4	1	2 and 3	4
1/2	40	100	100	100	100	100	100
	80	100	100	100	100	100	100
1/4	40	100	100	96	100	100	100
	80	100	100	100	100	100	100
1	40	100	100	90	100	100	100
	80	100	100	100	100	100	100
1 1/4	40	100	92	74	100	100	100
	80	100	100	100	100	100	100
1 1/2	40	100	83	66	100	100	100
	80	100	100	94	100	100	100
2	40	89	69	55	100	100	100
	80	100	100	81	100	100	100
2 1/2	40	99	76	61	100	100	100
	80	100	100	85	100	100	100
3	40	84	66	53	100	100	100
	80	100	94	75	100	100	100
3 1/2	40	77	60	48	100	100	96
	80	100	86	69	100	100	100
4	40	71	56	44	100	100	89
	80	100	81	65	100	100	100
5	40	62	49	39	100	97	78
	80	93	72	58	100	100	100
6	40	56	44	35	100	88	71
	80	89	70	56	100	100	100

NOTE: These pressure ratings are the same value as the design pressure of the corresponding pipe size and schedule in the same class location, as determined by the formula given Section 3(11) of this regulation and the

limitations in Section 3(12) of this regulation.]

(29) Valve installation in plastic pipe. Each valve installation in plastic pipe shall [must] be designed [so as] to protect [the] plastic material against excessive torsional or shearing loads when the valve or shutoff is operated, and from any other secondary stresses that might be exerted through the valve or its enclosures.

(30) Protection against accidental overpressuring:

(a) General requirements. Except as provided in subsection (31) of this section, each pipeline [that is] connected to a gas source so that [the] maximum allowable operating pressure could be exceeded as the result of pressure control failure or of some other type of failure, shall [must] have pressure relieving or pressure limiting devices that meet the requirements of subsections (32) and (33) of this section.

(b) Additional requirements for distribution systems. Each distribution system [that is] supplied from a source of gas [that is] at [a] higher pressure than [the] maximum allowable operating pressure for the system shall [must]:

1. Have pressure regulation devices capable of meeting [the] pressure, load, and other service conditions that will be experienced in normal operations of the system, and that could be activated in the event of failure of some portion of the system; and

2. Be designed [so as] to prevent accidental overpressuring.

(31) Control of [the] pressure of gas delivered from high-pressure distribution systems.

(a) If [the] maximum actual operating pressure of the distribution system is under 60 psig and a service regulator having all of the following characteristics is used, no other pressure limiting device is required:

1. A regulator capable of reducing distribution line pressure to pressures recommended for household appliances.

2. A single port valve with proper orifice for [the] maximum gas pressure at the regulator inlet.

3. A valve seat made of resilient material designed to withstand abrasion of [the] gas, impurities in [the] gas, cutting by the valve, and [to resist] permanent deformation when it is pressed against the valve port.

4. Pipe connections to the regulator not exceeding two (2) inches in diameter.

5. A regulator that, under normal operating conditions, is able to regulate [the] downstream pressure within [the] necessary limits of accuracy and to limit [the] buildup of pressure under no-flow conditions to prevent a pressure that would cause [the] unsafe operation of any connected and properly adjusted gas utilization equipment.

6. A self-contained service regulator with no external static or control lines.

(b) If [the] maximum actual operating pressure of the distribution system is sixty (60) psig, or less, and a service regulator that does not have all of the characteristics listed in paragraph (a) of this subsection is used, or if the gas contains materials that seriously interfere with the operation of service regulators, there shall [must] be suitable protective devices to prevent unsafe overpressuring of the customer's appliances if the service regulator fails.

(c) If [the] maximum actual operating pressure of the distribution system exceeds sixty (60) psig, one (1) of the following methods shall [must] be used to regulate and limit, to [the] maximum safe value, the pressure of gas delivered to the customer:

1. A service regulator having the characteristics listed in paragraph (a) of this subsection, and another regulator located upstream from the service regulator. The upstream regulator shall [may] not be set to maintain a pressure higher than sixty (60) psig. A device shall [must] be installed between the upstream regulator and the service regulator to limit [the] pressure on the inlet of the service regulator to sixty (60) psig or less in case the upstream regulator fails to function properly. This device may be either a relief valve or an automatic shutoff that shuts, if [the] pressure on the inlet of the service regulator exceeds the set pressure (sixty (60) psig or less), and remains closed until manually reset.

2. A service regulator and a monitoring regulator set to limit, to a maximum safe value, [the] pressure of [the] gas delivered to the customer.

3. A service regulator with a relief valve vented to the outside atmosphere, with the relief valve set to open so that the pressure of gas going to the customer does not exceed a maximum safe value. The relief valve may either be built into the service regulator or it may either be built into the service regulator or it may be a separate unit installed downstream from the service regulator. This combination may be used alone only in those cases where [the] inlet pressure on the service regulator does not exceed the manufacturer's safe working pressure rating of the service regulator, and shall [may] not be used where [the] inlet pressure on the service regulator exceeds 125 psig. For higher inlet pressure, the methods in paragraph (c)1 or 2 of this subsection shall [must] be used.

4. A service regulator and an automatic shutoff device that closes upon a rise in pressure downstream from the regulator and remains closed until manually reset.

(32) Requirements for design of pressure relief and limiting devices. Except for rupture discs, each pressure relief or pressure limiting device shall [must]:

(a) Be constructed of materials to prevent [such that the] operation [of the device will not be] impairment [ed] by corrosion;

(b) Have valves and valve seats [that are] designed not to stick in a position that will make the device inoperative;

(c) Be designed and installed so that it can be readily operated to determine if the valve is free, can be tested to determine operational [the] pressure [at which it will operate,] and can be tested for leakage when [in the] closed [position];

(d) Have support made of noncombustible material;

(e) Have discharge stacks, vents, or outlet ports designed to prevent accumulation of water, ice, or snow, located where gas can be discharged into the atmosphere without undue hazard;

(f) Be designed and installed so that the size of [the] openings, pipe, and fittings located between the system to be protected and the pressure relieving device, and the size of the vent line, are adequate to prevent hammering of

the valve and to prevent impairment of relief capacity;

(g) Where installed at a district regulator station to protect a pipeline system from overpressuring, be designed and installed to prevent any single incident such as an explosion in a vault or damage by a vehicle from affecting [the] operation of both the overpressure protective device and [the] district regulator; and

(h) Except for a valve that will isolate the system under protection from its source of pressure, be designed to prevent unauthorized operation of any stop valve that will make the pressure relief valve or pressure limiting device inoperative.

(33) Required capacity of pressure relieving and limiting stations.

(a) Each pressure relief station or pressure limiting station or group of those stations installed to protect [a] pipeline shall [must] have enough capacity, and shall [must] be set to operate, to insure the following:

1. In a low pressure distribution system, [the] pressure shall [may] not cause [the] unsafe operation of any connected and properly adjusted gas utilization equipment.

2. In pipelines other than a low pressure distribution system:

a. If [the] maximum allowable operating pressure is sixty (60) psig or more, [the] pressure shall [may] not exceed [the] maximum allowable operating pressure plus ten (10) percent, or the pressure that produces [a] hoop stress of seventy-five (75) percent of SMYS, whichever is lower.

b. If [the] maximum allowable operating pressure is twelve (12) psig or more, but less than sixty (60) psig, [the] pressure shall [may] not exceed [the] maximum allowable operating pressure plus six (6) psig; or

c. If [the] maximum allowable pressure is less than twelve (12) psig, [the] pressure shall [may] not exceed [the] maximum allowable operating pressure plus fifty (50) percent.

(b) When more than one (1) pressure regulating or compressor station feeds into a pipeline, relief valves or other protective devices shall [must] be installed at each station to ensure that [the] complete failure of the largest capacity regulator or compressor, or any single run of lesser capacity regulators or compressors in that station, will not impose pressure on any part of the pipeline or distribution system in excess of those for which it was designed, or against which it was protected, whichever is lower.

(c) Relief valves or other pressure limiting devices shall [must] be installed at or near each regulator station in a low-pressure distribution system, with a capacity to limit [the] maximum pressure in the main to a pressure that will not exceed [the] safe operating pressure for any connected and properly adjusted gas utilization equipment.

(34) Instrument, control and sampling pipe and components.

(a) Applicability. This subsection applies to [the] design of instrument, control, [and] sampling pipe and components. It does not apply to permanently closed systems, such as fluid-filled temperature-responsive devices.

(b) Materials and design. All material employed for pipe and components shall [must] be designed to meet [the] particular conditions of service and the following:

1. Each takeoff connection and attaching boss, fitting, or adapter shall [must] be made of suitable material, be able to withstand [the] maximum service pressure and temperature of [the] pipe or equipment to which it is attached, and be designed to satisfactorily withstand all stresses without failure by fatigue.

2. A shutoff valve shall [must] be installed in each takeoff line as near as practicable to [the] point of takeoff. Blowdown valves shall [must] be installed where necessary.

3. Brass or copper material shall [may] not be used for metal temperatures greater than 400 degrees Fahrenheit.

4. Pipe or components that may contain liquids shall [must] be protected by heating or other means from damage due to freezing.

5. Pipe or components in which liquids may accumulate shall [must] have drains or drips.

6. Pipe or components subject to clogging from solids or deposits shall [must] have suitable connections for cleaning.

7. [The] Arrangement of pipe, components, and supports shall [must] provide safety under anticipated operating stresses.

8. Each joint between sections of pipe, and between pipe and valves or fittings, shall [must] be made in a manner suitable for [the] anticipated pressure and temperature condition. Slip type expansion joints shall [may] not be used. Expansion shall [must] be allowed [for] by providing flexibility within the system itself.

9. Each control line shall [must] be protected from anticipated causes of damage and shall [must] be designed and installed to prevent damage to any one (1) control line from making both the regulator and [the] overpressure protective device inoperative.

Section 5. Welding of Steel in Pipelines. (1) Scope.

(a) This subsection prescribes minimum requirements for welding steel materials in pipelines.

(b) This subsection does not apply to welding that occurs during the manufacture of steel pipe or steel pipeline components.

[(2) General.]

[(a) Welding must be performed in accordance with established written welding procedures that have been qualified under subsection (3) of this section to produce sound, ductile welds.]

[(b) Welding must be performed by welders who are qualified under subsections (4) and (5) of this section for the welding procedure to be used.]

(2) [(3)] Qualification of welding procedures.

(a) [Each] Welding shall be performed by a qualified welder in accordance with established, written, and tested welding procedures; and quality of test welds determined by destructive testing to meet acceptability standards of this section. [procedure must be qualified under Section IX of the ASME Boiler and Pressure Vessel Code or Section 2 of API Standard 1104, whichever is appropriate to the function of the weld, except that a welding procedure qualified under an earlier edition previously listed in Appendix A may continue to be used but may not be requalified under the earlier edition.]

(b) Each [When a] welding procedure shall be recorded in detail, including results of qualifying tests. This record shall be retained and followed whenever the procedure is used. [is

being qualified under Section IX of the ASME Boiler and Pressure Vessel Code, the following steels are considered to fall within the P-Number 1 grouping for the purpose of the essential variables and do not require separate qualification of welding procedures:]

[1. Carbon steels that have a carbon content of 0.32 percent (heat analysis) or less.]

[2. Carbon steels that have a carbon equivalent (C + 1/4 Mn) of 0.65 percent (heat analysis) or less.]

[3. Alloy steel with weldability characteristics that have been shown to be similar to the carbon steels listed in paragraph (b)1 and 2 of this subsection. Alloy steels and carbon steels that are not covered by paragraph (b)1, 2 or 3 of this subsection require separate qualification of procedures for each individual pipe specification in accordance with Sections VIII and IX of the ASME Boiler and Pressure Vessel Code.]

[(c) Each welding procedure must be recorded in detail during the qualifying tests. This record must be retained and followed whenever the procedure is used.]

(3) [(4)] Qualification of welders.

(a) Except as provided in paragraph (b) [(c)] of this subsection, each welder shall [must] be qualified in accordance with Section 3 [IX] of the API Standard 1104 or Section IX of the ASME Boiler and Pressure Vessel Code [or Section 3 of the API Standard 1104]. However, a welder qualified under an earlier edition than listed in Section II of Appendix A [previously listed in Appendix A] may weld but shall [may] not requalify under that earlier edition.

[1. Section IX of the 1974 edition of the ASME Boiler and Pressure Vessel Code or, if qualified before July 1, 1976, the 1968 edition, except that a welder may not requalify under the 1968 edition.]

[2. The following editions of Section 3 of API Standard 1104:]

[a. The 1973 edition, except that a welder may be qualified by radiography under subsection 3.5] without regard for the standards in subsection 6.9 for depth of undercutting adjacent to the root bead unless that depth is visually determined by use of a depth measuring device on all undercutting along the entire circumference of the weld; or]

[b. If a welder is qualified before March 20, 1975, the 1968 edition, except that a welder may not requalify under the 1968 edition.]

[(b) When a welder is being qualified under Section IX of the ASME Boiler and Pressure Vessel Code, the following steels are considered to fall within the P-Number grouping for the purpose of the essential variables and do not require separate qualification.]

[1. Carbon steels that have a carbon content of 0.32 percent (heat analysis) or less.]

[2. Carbon steels that have a carbon equivalent (C + 1/4 Mn) of 0.65 percent (heat analysis) or less.]

[3. Alloy steel with weldability characteristics that have been shown to be similar to the carbon steels listed in paragraph (b)1 and 2 of this subsection. Alloy steels and carbon steels that are not covered by paragraph (b)1, 2 or 3 of this subsection require separate qualification of welders for each individual pipe specification in accordance with Sections VIII and IX of the ASME Boiler and Pressure Vessel Code.]

(b) [(c)] A welder may qualify to perform welding on pipe to be operated at [a] pressure that produces [a] hoop stress of less than twenty (20) percent of SMYS by performing an acceptable test weld for the process to be used, under the test set forth in Section 1 of Appendix C to this regulation. A welder who makes welded service line connections to mains shall [must] also perform an acceptable test weld under Section II of Appendix C to this regulation as a part of his qualifying test. After initial qualification, a welder shall [may] not perform welding unless:

1. Within the preceding fifteen (15) calendar months, the welder has requalified, except that the welder shall [must] requalify at least once each calendar year; or

2. Within the preceding seven and one-half (7 1/2) calendar months, but at least twice each calendar year, the welder has had:

a. A production weld cut out, tested and found acceptable in accordance with the qualifying test; or

b. For welders who work only on service lines two (2) inches or smaller in diameter, two (2) sample welds tested and found acceptable in accordance with the test in Section III of Appendix C to this regulation.

(4) [(5)] Limitations on welders.

(a) No welder whose qualification is based on nondestructive testing shall [may] weld compressor station pipe and components.

(b) No welder shall [may] weld with a particular welding process unless, within the preceding six (6) calendar months, he has engaged in welding with that process.

(c) A welder qualified under subsection (3) [(4)](a) of this section shall [may] not weld unless, within the preceding six (6) calendar months, the welder has had one (1) weld tested and found acceptable under Section 3 or 6 of API Standard 1104, except that a welder qualified under an earlier edition previously listed in Appendix A may weld but shall [may] not requalify under that earlier edition.

(5) [(6)] Protection from weather. The welding operation shall [must] be protected from weather conditions that would impair the quality of the completed weld.

(6) [(7)] Miter joints.

(a) A miter joint on steel pipe to be operated at [a] pressure that produces [a] hoop stress of thirty (30) percent or more of SMYS shall [may] not deflect the pipe more than three (3) degrees.

(b) A miter joint on steel pipe to be operated at [a] pressure that produces [a] hoop stress of less than thirty (30) percent but more than ten (10) percent of SMYS shall [may] not deflect the pipe more than twelve and one-half (12 1/2) degrees and shall [must] be a distance to one (1) pipe diameter or more away from any other miter joint, as measured from the crotch of each joint.

(c) A miter joint on steel pipe to be operated at [a] pressure that produces [a] hoop stress of ten (10) percent or less of SMYS shall [may] not deflect the pipe more than ninety (90) degrees.

(7) [(8)] Preparation for welding. Before beginning any welding, [the] welding surfaces shall [must] be clean and free of any material that may be detrimental to the weld, and the pipe or component shall [must] be aligned to provide the most favorable condition for depositing the root bead. This alignment shall [must] be preserved while the root bead is being

deposited.

[(9) Preheating.]

[(a) Carbon steel that has a carbon content in excess of 0.32 percent (heat analysis) or a carbon equivalent (C + 1/4 Mn) of 0.65 percent (heat analysis) or less.]

[(b) Carbon steel that has a lower carbon content or carbon equivalent than the steels covered by paragraph (a) of this subsection must be preheated for welding when preheating will alleviate existing conditions that would limit the welding technique or tend to adversely affect the quality of the weld.]

[(c) When steel materials with different preheat temperatures are being preheated for welding, the higher temperature must be used.]

[(d) Preheat temperature must be monitored to ensure that the required preheat temperature is reached before, and maintained during, the welding operation.]

[(10) Stress relieving.]

[(a) Except as provided in paragraph (f) of this subsection, each weld on carbon steel that has a carbon content in excess of 0.32 percent (heat analysis) or a carbon equivalent (C + 1/4 Mn) of 0.65 percent (heat analysis) must be stress relieved as prescribed in Section VIII of the ASME Boiler and Pressure Vessel Code.]

[(b) Except as provided in paragraph (f) of this subsection, each weld on carbon steel that has a carbon content equivalent (C + 1/4 Mn) of less than 0.65 percent (heat analysis) must be thermally stress relieved when conditions exist which cool the weld at a rate detrimental to the quality of the weld.]

[(c) Except as provided in paragraph (f) of this subsection, each weld on carbon steel pipe with a wall thickness of more than one and one-fourth (1 1/4) inches must be stress relieved.]

[(d) When a weld connects pipe or components that are of different thickness, the wall thickness to be used in determining whether stress relieving is required under this section is:]

[1. In the case of pipe connections, the thicker of the two (2) pipes joined; or]

[2. In the case of branch connections, slip-on flanges, or socket weld fittings, the thickness of the pipe run or header.]

[(e) Each weld of different materials must be stress relieved, if either material requires stress relieving under this section.]

[(f) Notwithstanding paragraphs (a), (b), and (c) of this subsection, stress relieving is not required for the following:]

[1. A fillet or groove weld one-half (1/2) inch, or less, in size (leg) that attaches a connection two (2) inches, or less, in diameter; or]

[2. A fillet or groove weld three-eighths (3/8) inch, or less, in groove size that attaches a supporting member or other nonpressure attachment.]

[(g) Stress relieving required by this section must be performed at a temperature of at least 1,100 degrees Fahrenheit for carbon steels and at least 1,200 degrees Fahrenheit for ferritic alloy steels. When stress relieving a weld between steel materials with different stress relieving temperatures, the higher temperature must be used.]

[(h) When stress relieving, the temperature must be monitored to ensure that a uniform temperature is maintained and that the proper stress relieving cycle is accomplished.]

(8) [(11)] Inspection and test of welds.

(a) Visual inspection of welding shall [must] be conducted to insure that:

1. [The] Welding is performed in accordance with [the] welding procedure; and

2. [The] Weld is acceptable under paragraph (c) of this subsection.

(b) [The] Welds on a pipeline to be operated at [a] pressure that produces [a] hoop stress of twenty (20) percent or more of SMYS shall [must] be nondestructively tested in accordance with subsection (9) [(12)] of this section, except that welds that are visually inspected and approved by a qualified welding inspector need not be nondestructively tested if:

1. The pipe has a nominal diameter of less than six (6) inches; or

2. The pipeline is to be operated at [a] pressure that produces [a] hoop stress of less than forty (40) percent of SMYS, and [the] welds are so limited in number that nondestructive testing is impractical.

(c) [The] Acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in Section 6 of API Standard 1104.

(9) [(12)] Nondestructive testing.

(a) Nondestructive testing of welds shall [must] be performed by any process, other than trepanning, that will clearly indicate defects that may affect the integrity of the weld.

(b) Nondestructive testing of welds shall [must] be performed:

1. In accordance with written procedures; and

2. By persons [who have been] trained and qualified in [the] established procedures and with [the] equipment employed in testing.

(c) Procedures shall [must] be established for [the] proper interpretation of each nondestructive test of a weld to ensure [the] acceptability of the weld under subsection (8) [(11)](c) of this section.

(d) When nondestructive testing is required under subsection (8) [(11)](b) of this section, the following percentages of each day's field butt welds, selected at random by the operator, shall [must] be nondestructively tested over their entire circumference:

1. In Class 1 locations, at least ten (10) percent.

2. In Class 2 locations, at least fifteen (15) percent.

3. In Class 3 and Class 4 locations, at crossings of major or navigable rivers, and offshore, and within railroad or public highway rights-of-way, including tunnels, bridges, and overhead road crossings, 100 percent unless impracticable, then at least [if practicable, but not less than] ninety (90) percent. Nondestructive testing shall be impracticable for each girth weld not tested.

4. At pipeline tie-ins [Within railroad or public highway rights-of-way, including tunnels, bridges and overhead road crossings, and at pipeline tie-ins,] 100 percent.

(e) Except for a welder whose work is isolated from the principal welding activity, a sample of each welder's work for each day shall [must] be nondestructively tested, when nondestructive testing is required under subsection (8) [(11)](b) of this section.

(f) When nondestructive testing is required under subsection (8) [(11)](b) of this section, each operator shall [must] retain, for the life

of the pipeline, a record showing by milepost, engineering station, or by geographic feature, the number of girth welds made, [the] number nondestructively tested, [the] number rejected, and [the] disposition of [the] rejects.

(10) [(13)] Repair or removal of defects.

(a) Each weld that is unacceptable under subsection (11)(c) of this section shall [must] be removed or repaired. A weld shall [must] be removed if it has a crack that is more than eight (8) percent of the weld length.

(b) Each weld that is repaired shall [must] have the defect removed down to sound metal, and the segment to be repaired shall [must] be preheated if conditions exist which would adversely affect [the] quality of the weld repair. After repair, the segment of the weld that was repaired shall [must] be inspected to ensure its acceptability.

(c) Repair of a crack or [of] any defect in a previously repaired area shall [must] be in accordance with written weld repair procedures [that have been] qualified under subsection (2) [(3)] of this section. Repair procedures shall [must] provide that the minimum mechanical properties specified for the welding procedure used to make the original weld are met upon completion of the final weld repair.

Section 6. Joining of Materials other than by Welding. (1) Scope.

(a) This section prescribes minimum requirements for joining materials in pipelines, other than by welding.

(b) This section does not apply to joining during the manufacture of pipe or pipeline components.

(2) General.

(a) The pipeline shall [must] be designed and installed so that each joint will sustain [the] longitudinal pullout or thrust forces caused by contraction or expansion of [the] piping or by anticipated external or internal loading.

(b) Each joint shall [must] be made in accordance with written procedures [that have been] proven by test or experience to produce strong gastight joints.

(c) Each joint shall [must] be inspected to insure compliance with this subsection.

(3) Cast iron pipe.

(a) Each caulked bell and spigot joint in cast iron pipe shall [must] be sealed with mechanical leak clamps.

(b) Each mechanical joint in cast iron pipe shall [must] have a gasket made of [a] resilient material as the sealing medium. Each gasket shall [must] be suitably confined and retained under compression by a separate gland or follower ring.

(c) Cast iron pipe shall [may] not be joined by threaded joints or [.

(d) Cast iron pipe may not be joined] by brazing.

[(e) Each flange on a flanged joint in cast iron pipe must conform in dimensions and drilling to ANSI Standard B16.1 and be cast integrally with the pipe, valve, or fitting.]

(4) Ductile iron pipe.

[(a) Each mechanical joint in ductile iron pipe must conform in dimensions and drilling to ANSI Standard A21.52 and ANSI Standard A21.11.]

[(b)] Ductile iron pipe shall [may] not be jointed by threaded joints or by brazing.

[(c) Ductile iron pipe may not be joined by brazing.]

(5) Copper pipe.

[(a)] Copper pipe shall [may] not be threaded, except that copper pipe used for joining screw fittings or valves may be threaded if [the] wall thickness is equivalent to the comparable size of Schedule 40 or heavier [standard] wall pipe listed in Table C1 of ANSI B16.5 [, as defined in ANSI Standard B36.10].

[(b) Copper pipe shall be joined by using either a compression type coupling or a brazed or soldered lap joint. The fillet material used for brazing shall be a copper-phosphorus alloy or silver base alloy. Butt welds are not permissible for joining copper pipe or tubing. Connections using a copper or cast bronze service line tee or extension fitting sweat-brazed to the copper main, are recommended for service line connections to copper mains.]

(6) Plastic pipe.

(a) General. A plastic pipe joint [that is] joined by solvent cement, adhesive, or heat fusion shall [may] not be disturbed until it has properly set. Plastic pipe shall [may] not be joined by a threaded joint or miter joint.

(b) Solvent cement joints. Each solvent cement joint on plastic pipe shall [must] comply with the following:

1. [The] Mating surfaces of the joint shall [must] be clean, dry, and free of material which might be detrimental to the joint.

2. [The] Solvent cement shall [must] conform with ASTM Specification D 2513.

[3. The safety requirements of Appendix A of ASTM Specification D 2513 must be met.]

3. [4. The] Joint shall [may] not be heated to accelerate [the] setting of the cement.

(c) Heat-fusion joints. Each heat-fusion joint on plastic pipe shall [must] comply with the following:

1. A butt heat-fusion joint shall [must] be joined by a device that holds the heater element square to the ends of the piping, compresses the heated ends together, and holds the pipe in proper alignment while the plastic hardens.

2. A socket heat-fusion joint shall [must] be joined by a device that heats [the] mating surfaces of the joint uniformly and simultaneously to essentially the same temperature.

3. Heat shall [may] not be applied with a torch or other open flame.

(d) Adhesive joints. Each adhesive joint on plastic pipe shall [must] comply with the following:

1. [The] Adhesive shall [must] conform to ASTM Specification D 2517.

2. [The] Materials and adhesive shall [must] be compatible with each other.

(e) Mechanical joints. Each compression type mechanical joint on plastic pipe shall [must] comply with the following:

1. [The] Gasket material in the coupling shall [must] be compatible with the plastic.

2. A rigid internal tubular stiffener, other than a split tubular stiffener, shall [must] be used in conjunction with the coupling.

(7) Plastic pipe; qualifying joining procedures.

(a) Heat fusion, solvent cement, and adhesive joints. Before any written procedure established under subsection (2)(b) of this section is used for making plastic pipe joints by a heat fusion, solvent cement, or adhesive method, that [the] procedure shall [must] be qualified by subjecting specimen joints made according to the

procedure to the following tests:

1. [The] Burst test requirements of:

a. If [In the case of] thermoplastic pipe, Paragraph 8.6 (Sustained Pressure Test) or Paragraph 8.7 (Minimum Hydrostatic Burst Pressure) of ASTM D 2513; or

b. If [In the case of] thermosetting plastic pipe, Paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or Paragraph 8.9 (Sustained Static Pressure Test) of ASTM D 2 [1]517;

2. For procedures intended for lateral pipe connections, subject a specimen joint made from pipe sections joined at right angles according to the procedure to a force on the lateral pipe until failure occurs in the specimen. If failure initiates outside the joint area, the procedure qualifies for use; and

3. For procedures intended for nonlateral pipe connections, follow the tensile test requirements of ASTM D 638, except that the test may be conducted at ambient temperature and humidity. If the specimen elongates no less than twenty-five (25) percent, or failure initiates outside the joint area, the procedure qualifies for use.

(b) Mechanical joints. Before any written procedure established under subsection (2)(b) of this section is used for making mechanical plastic pipe joints [that are] designed to withstand tensile forces, the procedure shall [must] be qualified by subjecting five (5) specimen joints made according to the procedure to the following tensile test:

1. Use an apparatus for the test as specified in ASTM D 638-77a (except for conditioning).

2. [The] Specimen shall [must] be of such length that [the] distance between the grips of the apparatus and the end of the stiffener does not affect [the] joint strength.

3. [The] Speed of testing is five (5) millimeters [mm] (two-tenths (.20) inches) per minute, plus or minus twenty-five (25) percent.

4. Pipe specimens less than 102 millimeters [mm] (four (4) inches) in diameter are qualified if [the] pipe yields to an elongation of no less than twenty-five (25) percent or failure initiates outside the joint area.

5. Pipe specimens 102 millimeters [mm] (four (4) inches) and larger in diameter shall be pulled until the pipe is subjected to [a] tensile stress equal to or greater than [the] maximum thermal stress that would be produced by a temperature change of thirty-eight (38) degrees Centigrade (100°F) or until the pipe is pulled from the fitting. If the pipe pulls from the fitting, the lowest value of the five (5) test results or the manufacturer's rating, whichever is lower, shall [must] be used in [the] design calculations for stress.

6. Each specimen that fails at the grips shall [must] be retested using new pipe.

7. Results obtained pertain only to the specific outside diameter, and material of [the] pipe tested, except that testing of [a] heavier wall pipe may be used to qualify pipe of the same material but with [a] lesser wall thickness.

(c) A copy of each written procedure being used for joining plastic pipe shall [must] be available to [the] persons making and inspecting joints.

(d) Pipe or fittings manufactured before July 1, 1980, may be used in accordance with procedures that the manufacturer certifies will produce a joint as strong as the pipe.

(8) Plastic pipe; qualifying persons to make joints.

(a) No person shall [may] make a plastic pipe joint unless that person has been qualified under the applicable joining procedure by:

1. Appropriate training or experience in [the] use of the procedure; and

2. Making a specimen joint from pipe sections joined according to the procedure that passes the inspection and testing set forth in paragraph (b) of this subsection.

(b) [The] Specimen joint shall [must] be:

1. Visually examined during and after assembly or joining and found to have the same appearance as a joint or photograph of a joint that is acceptable under the procedure; and

2. If [In the case of] a heat fusion, solvent cement, or adhesive joint:

a. Tested under any one (1) of the test methods listed in subsection (7)(a) of this section applicable to the type of joint and material being tested;

b. Examined by ultrasonic inspection and found not to contain flaws that would cause failure; or

c. Cut into at least three (3) longitudinal straps, each of which is:

(i) Visually examined and found not to contain voids or discontinuities on [the] cut surface of the joint area; and

(ii) Deformed by bending, torque, or impact, and if failure occurs, it shall [must] not initiate in the joint area.

(iii) A person shall [must] be requalified under an applicable procedure, if during any twelve (12) month period that person:

A. Does not make any joints under that procedure; or

B. Has made three (3) joints or three (3) percent of the joints [made], whichever is greater, under that procedure, that are found unacceptable by testing under Section 11(7) of this regulation.

(d) Each operator shall establish a method to determine that each person making joints in plastic pipelines in his system is qualified in accordance with this section [of this regulation].

(9) Plastic pipe; inspection of joints. No person shall [may] carry out the inspection of joints in plastic pipes required by subsections (2)(c) and (8)(b) of this section unless that person has been qualified by appropriate training or experience in evaluating the acceptability of plastic pipe joints made under the applicable joining procedure.

Section 7. General Construction Requirements for Transmission Lines and Mains. (1) Scope. This section prescribes minimum requirements for constructing transmission lines and mains.

(2) Compliance with specifications or standards. Each transmission line or main shall [must] be constructed in accordance with comprehensive written specifications or standards [that are] consistent with this section [of this regulation].

(3) Reports and records of proposed construction:

(a) At least thirty (30) days prior to [the] construction or major reconstruction of any gas pipeline intended to be subjected to pressure in excess of 100 psig, or twenty (20) percent of minimum yield strength, whichever is lower, and after receipt from the commission of a certificate of public convenience and necessity for such construction if required, the utility

shall file a report [shall be filed] with the commission setting forth the specifications for such pipeline and the maximum allowable operating pressure.

[(b) Every gas utility shall, on the 15th day of each month, submit a report to the commission setting forth the progress of such construction or major reconstruction as of the end of the preceding month.]

(b) [(c)] Before any gas pipeline or main is placed in operation intended to be subjected to pressures in excess of 100 psig, or twenty (20) percent of minimum yield strength, whichever is lower, a report shall be filed with the commission certifying the maximum pressure to which the line is intended to be subject and also certifying that the pipeline has been constructed and testing in accordance with the requirements of this regulation. [the rules herein prescribed, and] A further report shall be filed within sixty (60) days thereafter including the results of all tests made pursuant to this section [thereto]. No gas pipeline or main shall be operated at pressures in excess of the pressure for which it was certified to the commission.

(d) [The] Responsibility for [the] maintenance of necessary records to establish that compliance with [the] rules and regulations has been accomplished rests with the utility. Such records shall be available for inspection at all times by [the] commission [or the commission's] staff.

(4) Inspection: general. Each transmission line or main shall [must] be inspected to ensure that it is constructed in accordance with this section. The inspector shall have authority to order [the] removal and replacement of any section of pipe and fittings that fail to meet the standards of this regulation.

(5) Inspection of materials. Each length of pipe and each other component shall [must] be visually inspected at [the] site of installation to ensure that it has not sustained any visually determinable damage that could impair its serviceability. Plastic pipe and tubing shall be adequately supported during storage. [and] Thermoplastic pipe, tubing and fittings shall be protected from exposure to direct sun rays if the pipe is to remain exposed for twelve (12) months or longer unless written warranty of the manufacturer states that such protection is not necessary. However, if the manufacturer specifies that the pipe has been manufactured with a minimum of two (2) percent or more carbon black content to prevent ultraviolet degradation, the pipe may be exposed to sun rays for up to thirty-six (36) months.

(6) Repair of steel pipe.

(a) Each imperfection or damage that impairs the serviceability of a length of steel pipe shall [must] be repaired or removed. If [a] repair is made by grinding, [the] remaining wall thickness shall [must] at least be equal to either:

1. [The] Minimum thickness required by the tolerance in the specification to which the pipe was manufactured; or

2. [The] Nominal wall thickness required for the design pressure of the pipeline.

(b) Each of the following dents shall [must] be removed from steel pipe to be operated at [a] pressure that produces [a] hoop stress of twenty (20) percent, or more, of SMYS:

1. A dent that contains a stress concentrator such as a scratch, gouge, groove, or arc burn.

2. A dent that affects the longitudinal weld or a circumferential weld.

3. In pipe to be operated at [a] pressure that produces [a] hoop stress of forty (40) percent or more of SYMS, a dent that has a depth of:

a. More than one-quarter (1/4) inch in pipe twelve and three-fourths (12 3/4) inches or less in outer diameter; or

b. More than two (2) percent of the nominal pipe diameter in pipe over twelve and three-fourths (12 3/4) inches is outer diameter.

For [the] purposes of this subsection a "dent" is a depression that produces [a] gross disturbance in [the] curvature of the pipe wall without reducing [the] pipe-wall thickness. [The] Depth of a dent is measured as the gap between the lowest point of the dent and a promulgation of the pipe's original contour [of the pipe].

(c) Each arc burn on steel pipe to be operated at [a] pressure that produces [a] hoop stress of forty (40) percent, or more, of SMYS shall [must] be repaired or removed. If [a] repair is made by grinding, the arc burn shall [must] be completely removed, and [the] remaining wall thickness shall [must] be at least equal to either:

1. [The] Minimum wall thickness required by the tolerances in the specification to which the pipe was manufactured; or

2. [The] Nominal wall thickness required for the design pressure of the pipeline.

(d) A gouge, groove, arc burn, or dent shall [may] not be repaired by insert patching or by pounding out.

(e) Each gouge, groove, arc burn, or dent [that is] removed from a length of pipe shall [must] be removed by cutting out the damaged portion as a cylinder.

(7) Repair of plastic pipe. Each imperfection or damage that would impair [the] serviceability of plastic pipe shall [must] be repaired by a patching saddle or removed.

(8) Bends and elbows.

(a) Each field bend in steel pipe, other than a wrinkle bend made in accordance with subsection (9) of this section shall [must] comply with the following:

1. A bend shall [must] not impair [the] serviceability of the pipe.

[2. For pipe more than four (4) inches in nominal diameter, the difference between the maximum and minimum diameter at a bend must not be more than two and one-half (2 1/2) percent of the nominal diameter.]

2. [3.] Each bend shall [must] have a smooth contour and be free from buckling, cracks, or any other mechanical damage.

3. [4.] On pipe containing a longitudinal weld, the longitudinal weld shall [must] be as near as practicable to the neutral axis of the bend unless:

a. The bend is made with an internal bending mandrel; or

b. The pipe is twelve (12) inches or less in outside diameter or has a diameter to wall thickness ratio less than seventy (70).

(b) Each circumferential weld of steel pipe [which is] located where [the] stress during bending caused [a] permanent deformation in the pipe shall [must] be nondestructively tested either before or after the bending process.

(c) Wrought-steel welding elbows and transverse segments of these elbows shall [may]

not be used for changes in direction on steel pipe [that is] two (2) inches or more in diameter unless the arc length, as measured along the crotch, is at least one (1) inch.

(9) Wrinkle bends in steel pipe.

(a) A wrinkle bend shall [may] not be made on steel pipe to be operated at [a] pressure that produces [a] hoop stress of thirty (30) percent, or more, of SYMS.

(b) Each wrinkle bend on steel pipe shall [must] comply with the following:

1. The bend shall [must] not have any sharp kinks.

2. When measured along the crotch of the bend, [the] wrinkles shall [must] be a distance of at least one (1) pipe diameter.

3. On pipe sixteen (16) inches or larger in diameter, the bend shall [may] not have a deflection of more than one and one-half (1 1/2) degrees for each wrinkle.

4. On pipe containing a longitudinal weld, the longitudinal seam shall [must] be as near as practicable to the neutral axis of the bend.

(10) Protection from hazards.

(a) Each transmission line or main shall [must] be protected from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads.

(b) Each aboveground transmission line or main, not in inland navigable water areas, shall [must] be protected from accidental damage by vehicular traffic or other similar causes, either by being placed at a safe distance from [the] traffic or by installing barricades.

(c) Pipelines, including pipe risers, on each platform located in inland navigable waters shall [must] be protected from accidental damage by vessels.

(11) Installation of pipe in a ditch.

(a) When installed in a ditch, each transmission line [that is] to be operated at [a] pressure producing [a] hoop stress of twenty (20) percent or more of SMYS shall [must] be installed so that the pipe adequately fits the ditch [so as] to minimize stresses and protect [the] pipe coating from damage.

(b) When a ditch for a transmission line or main is backfilled, it shall [must] be backfilled in a manner that:

1. Provides firm support under the pipe; and

2. Prevents damage to [the] pipe and pipe coating from equipment or [from the] backfill material.

(12) Installation of plastic main [pipe].

(a) Plastic pipe shall [must] be installed below ground level and shall conform to [the] applicable provisions of subsection (15) of this section except that plastic [pipelines and] mains shall be installed with [a] minimum cover of twenty-four (24) inches at all stress levels unless encased or otherwise protected.

(b) Plastic pipe [that is] installed in a vault or any other below grade enclosure shall [must] be completely encased in gastight metal pipe and fittings [that are] adequately protected from corrosion.

(c) Plastic pipe shall [must] be installed [so as] to minimize shear or tensile stresses.

(d) Thermoplastic pipe [that is] not encased shall [must] have [a] minimum wall thickness of 0.090 inches, except that pipe with an outside diameter of 0.875 inches or less may have [a] minimum wall thickness of 0.062 inches.

(e) Plastic pipe [that is] not encased shall [must] have an electrically conductive wire or other means of located the pipe while it is underground.

(f) Plastic pipe [that is] being encased shall [must] be inserted into [the] casing pipe in a manner that will protect the plastic. The leading end of the plastic shall [must] be closed before [the] insertion.

(13) Casing. Each casing used on a transmission line or main under a railroad or highway shall [must] comply with the following:

(a) [The] Casing shall [must] be designed to withstand [the] superimposed loads.

(b) If there is a possibility of water entering the casing, [the] ends shall [must] be sealed.

(c) If [the] ends of an unvented casing are sealed and the sealing is strong enough to retain [the] maximum allowable operating pressure of the pipe, the casing shall [must] be designed to hold this pressure at a stress level of not more than seventy-two (72) percent of SMYS.

(d) If vents are installed on a casing, [the] vents shall [must] be protected from [the] weather to prevent water from entering the casing.

(14) Underground clearance.

(a) Each transmission line shall [must] be installed with at least twelve (12) inches of clearance from any other underground structure not associated with the transmission line. If this clearance cannot be attained, The transmission line shall [must] be protected from damage that might result from [the] proximity to [of the] other structure.

(b) Each main shall [must] be installed with enough clearance from any other underground structure to allow proper maintenance and to protect against damage that might result from proximity to other structures.

(c) In addition to meeting the requirements of paragraph (a) or (b) of this subsection, each plastic transmission line or main shall [must] be installed with sufficient clearance, or shall [must] be insulated, from any source of heat [so as] to prevent [the] heat from impairing [the] serviceability of the pipe.

(d) Each pipe-type or bottle type holder shall [must] be installed with [a] minimum clearance from any other holder as prescribed in Section 4(19) [(18)](b) of this regulation.

(15) Cover.

(a) Except as provided in paragraphs (c) and (d) of this subsection, each buried transmission line shall [must] be installed with minimum cover as follows:

Location	Normal Soil (inches)	Consolidated Rock (inches)
Class 1 locations	30	18
Class 2, 3 and 4 locations	36	24
Drainage ditches of public roads and railroad crossings	36	24

(b) Except as provided in paragraphs (c) and (d) of this subsection, each buried main shall [must] be installed with at least twenty-four (24) inches of cover.

(c) Where an underground structure prevents

[the] installation of a transmission line or main with [the] minimum cover, the transmission line or main may be installed with less cover if it is provided with additional protection to withstand anticipated external loads.

(d) All pipe [which is] installed in a navigable river or stream shall [must] have [a] minimum cover of forty-eight (48) inches in soil or twenty-four (24) inches in consolidated rock. However, less than [the] minimum cover is permitted in accordance with paragraph (c) of this subsection.

Section 8. Gas Measurement. (1) Scope. This section prescribes minimum requirements for [the] measurement of gas, [the] accuracy of [the] measuring instruments (meters), meter testing facilities and periodic testing of meters.

(2) Method of measuring service.

(a) All gas sold by a utility and all gas consumed by a utility in the State of Kentucky shall be metered through approved type meters except in cases of emergency or when otherwise authorized by the commission. Each meter shall bear an identifying number. When gas is sold at high pressures or large volumes, the contract or rate schedule shall specify [the] standards used to calculate [the] gas volume. Prepayment meters shall not be used unless [except where] there is no other satisfactory method of collecting payment for [the] services rendered.

(b) All gas delivered as compensation for leases, rights-of-way, or for other reasons, not charged [for] at the utility's regular schedule of charges, shall be metered and a record kept of each transaction [thereof]. All meters and regulators installed to measure [for the purpose of measuring] gas and to regulate [for the purpose of regulating the] pressure of gas shall be under the control of the utility and subject to the rules of the utility and [the rules] of the commission.

(c) The utility shall make no charge for furnishing and installing any meter or appurtenance necessary to measure [the] gas furnished, except by mutual agreement as approved by the commission in special cases or except where duplicate or check meters are requested by the customer.

(d) Each gas utility shall adopt a standard method of meter and service line installation insofar as practicable. These [Such] methods shall be set out with a written description and[/or] with drawings as [to the extent] necessary for [a] clear understanding of the requirements, all of which shall be filed with the commission. Copies of these standard methods shall be made available to prospective customers, [and] contractors or others engaged in [the business of] installing pipe for gas utilization. All meters shall be set in place by the utility.

(e) Each customer shall be metered separately except in cases of multioccupants under the same roof sharing [with] a common entrance or [with] an enclosure where it is unreasonable or uneconomical to measure each unit separately.

(f) The utility may render temporary service to a customer and may require the customer to bear all [of the] costs of installing and removing [the] service in excess of any salvage realized. In this respect, [a] temporary service shall be considered to be service that is not required or used for more than one (1) year.

(3) Accuracy requirements for meters. All tests to determine [the] accuracy of registration of any gas meters shall be made by a qualified meter tester and with suitable facilities.

(a) Diaphragm displacement meters:

1. Before being installed for [the] use by [of] any customer, every diaphragm displacement gas meter, whether new, repaired or removed from service for any cause shall be in good working condition and shall be adjusted to be correct to within one-half (1/2) of one (1) percent, plus or minus when passing gas at approximately twenty (20) percent and 100 percent of the rated capacity of the meter as specified by the manufacturer based on five-tenths (0.5) inch water column differential. A pilot test or quartering to determine that the meter will register at one-half (1/2) of one (1) percent of the rated capacity shall be made before placing meters in service.

2. Meters removed from service for periodic testing shall be tested for accuracy as soon as practical after removal. An "as found" test shall be made at a flow-rate of approximately twenty (20) percent and 100 percent of the rated capacity of the meter based on five-tenths (0.5) inch water column differential and results of these [said] tests algebraically averaged to determine [the] accuracy. If [the] error is less than two (2) percent this shall be reported as the "as found" test. If [the] error is more than two (2) percent, two (2) additional tests shall be made at twenty (20) percent and 100 percent, and the average of these three (3) tests shall be reported as the "as found" test. The three (3) test procedures shall apply to any customer request test, complaint test, or bill adjustment made on the basis of the meter.

3. Meters of good working condition that are removed from service for reasons other than periodic, customer or commission request tests shall be tested as soon as practicable after removal if [the] elapsed time since the last test exceeds fifty (50) percent of the periodic test period for those meters.

(b) Other than diaphragm displacement meters.

1. All meters other than diaphragm displacement meters shall be tested at approved intervals by the utility meter tester using flow provers or other approved methods either in the ship or at the [on] location of use at the utility's option [of the utility] and with the commission's approval [of the commission] of facilities and methods used. [The] Accuracy of these meters shall be maintained as near 100 percent as possible. Test ranges and procedures shall be as prescribed in adopted standards or approved by the commission.

2. All meter installations shall be inspected for proper design and construction and all instruments, regulators and valves used in conjunction with [the] installation shall be tested for desired operation and accuracy before being placed in service. This inspection shall be made by a qualified [competent] person. Test data as to conditions found, corrected if in error, and conditions as left shall be made available for inspection by [the] commission staff. Subsequent test results shall be a portion of regular meter test reports submitted to the commission by the utility.

(4) Meter testing facilities and equipment.

(a) Meter shop.

1. Each utility, unless specifically excepted

[excused] by the commission, shall maintain a meter shop to [for the purpose of] inspect[ing], test[ing] and repair[ing] meters. The shop shall be open for inspection by [authorized representatives of the] commission staff at all reasonable times. [, and the] Facilities and equipment, as well as [the] methods of measurement and testing employed, shall be subject to [the] approval of the commission.

2. The meter shop shall consist of a repair room or shop proper and a proving room. The proving room shall be designed so that [the] meters and meter testing apparatus are protected from excessive changes in temperature and other disturbing factors. The proving room or the entire meter shop shall be air conditioned if necessary to achieve satisfactory temperature control.

3. The proving room shall be well lighted and preferably not on an outside wall of the building. Temperatures within the proving room shall not vary more than two (2) degrees Fahrenheit per hour nor more than five (5) degrees Fahrenheit over a twenty-four (24) hour period.

(b) Working standards.

1. Each utility, unless specifically excepted [excused] by the commission, shall own and make proper provision to operate at least one (1) approved belltype meter prover, preferably of ten (10) cubic feet capacity, but in no case of less than five (5) cubic feet capacity. The prover shall be equipped with suitable thermometers and other necessary accessories. This [, and such] equipment shall be maintained in proper condition and adjustment so that it shall be capable of determining the accuracy of any service meter, practical to [of] test by it, to within one-half (1/2) of one (1) percent plus or minus.

2. The prover shall be accurate to within three-tenths (0.3) of one (1) percent at each point used in testing meters.

3. The prover shall not be located near any radiator, heater, steam pipe, or hot or cold air duct. Direct sunlight shall not be allowed to fall on the prover or the meters under test.

4. During conditions of satisfactory operation air [the] temperature [of the air] in the prover shall be within one (1) degree Fahrenheit of the ambient temperature, and oil [the] temperature [of the oil] in the prover shall not differ from the temperature of [the] ambient air by more than one (1) degree Fahrenheit.

5. [The] Meters to be tested shall be stored in such manner that [the] temperature of the meters is substantially the same as [the] temperature of the prover. [In order] To achieve this, [the] meters shall be placed in the environment of the prover for a minimum of five (5) hours.

(c) All testing instruments and other equipment certified by the commission shall [at all times] be accompanied at all times by a certificate showing [giving] the date when it was last tested and adjusted. The certificate must be signed by a proper authority designated by the commission. A tag referring to such certificate may be attached to the instruments when practicable. These certificates, when superseded, shall be kept on file by [in the office of] the utility.

(d) Sixty (60) days after the effective date of a commission order granting convenience and necessity for a new utility, that [such] utility shall advise the commission in writing as to [the] kind and amount of testing equipment available.

(5) Periodic tests.

(a) Periodic tests of all meters shall be made according to the following schedule based on rated capacities. Rated meter capacity is defined as the capacity of the meter at five-tenths (0.5) of one (1) inch water column differential for diaphragm meters and as specified by the manufacturer for all other meters.

1. [All] Positive-displacement meters, with [a] rated capacity up to and including 500 cubic feet per hour, shall be tested at least once every ten (10) years.

2. [All] Positive-displacement meters, with [a] rated capacity above 500 cubic feet per hour, up to and including 1,500 cubic feet per hour, shall be tested at least once every five (5) years.

3. [All] Positive-displacement meters above 1,500 cubic feet per hour shall be tested at least once every year.

4. [All] Orifice meters shall have their recording gauges tested at least once every six (6) months. [and the] Orifice size and condition shall be checked at the required meter test interval.

5. [All] Auxiliary measurement devices such as pressure, temperature, volume, load demand and remote reading devices shall be tested at the required meter test interval.

[(b) Meters not in compliance with the periodic test requirements.]

[1. All meters in service on and after the effective date of this regulation for which there is no record of test within the time period specified by this subsection shall be tested as soon thereafter as circumstances will permit. Meters with the greatest time elapsed since the last test shall be tested first.]

[2. Subsequent to the effective date of this regulation, the test of meters discussed in paragraph 1 of this subsection shall be completed within one-half (1/2) of the period required for tests of meters of that class and rating as specified in this subsection.]

(b) [(c)] Whenever the number of meters of any type which register in error beyond the limits specified in these rules is deemed [to be] excessive, [then] this type shall be tested with such additional frequency as the commission may direct.

(c) A utility desiring to adopt a scientific sample meter test plan for positive displacement meters in accordance with parameters established by the commission shall submit its application to the commission for approval. Upon approval, the sample testing plan may be followed in lieu of tests prescribed in subsections (3) and (5) of this section and 807 KAR 5:006, Section 13(1).

(6) Measuring production and shipment into and out of the state.

(a) The utility shall measure and record the quantity of all gas produced and purchased by it [a utility] in Kentucky [shall be measured and the quantity thereof recorded].

(b) The utility shall measure and record the quantity of all gas piped out of or brought into the state of Kentucky [by a utility shall be measured and quantity thereof recorded].

Section 9. Customer Meters, Service Regulators, and Service Lines. (1) Scope. This

section prescribes minimum requirements for installing customer meters, service regulators, service lines, service line valves, and service line connections to mains.

(2) Customer meters and regulators: location.

(a) Each meter and service regulator, whether inside or outside of a building, shall [must] be installed in a readily accessible location and [be] protected from corrosion and other damage.

(b) Meters shall be easily accessible for reading, testing and making necessary adjustments and repairs, and where indoor type meters are necessary they shall be installed in a clean, dry, safe, convenient place. Unless absolutely unavoidable, meters shall not be installed in any location where [the] visits of the meter reader or tester will cause annoyance to the customer or [a] severe inconvenience to the utility. Existing meters [which are] located in places not permitted by rule shall be relocated by the customer or owner to an approved position.

(c) Proper provision shall be made by the customer for [the] installation of the utility's meter. At least six (6) inches clear space shall be available, if possible, on all sides of the meter and not less than thirty (30) inches in front of it. When installed within a building, a meter shall [must] be located in a ventilated place and not less than three (3) feet from any source of ignition or any source of heat which might damage the meter.

(d) When a number of meters are placed in the same location, each meter shall be tagged or marked to indicate the customer served by it and such identification shall be preserved and maintained by the owner of the premises served.

(e) When the distance between the utility's main and [the] nearest point of consumption is more than 150 feet, the meter shall be located as near to the utility's main as may be practicable. This provision shall apply when any [whether or not all or] part of the service line has [shall have] been constructed by either the customer or utility.

(f) When a customer is [s are] served from a pipeline designed to operate in excess of sixty (60) psig [high pressure lines,] the meters, [regulator or] regulators and safety devices shall be located as near to the utility's pipeline [main] as practicable.

(g) Each service regulator installed within a building shall [must] be located as near as practical to [the] point of service line entrance.

(h) Where feasible, the upstream regulator in a series shall [must] be located outside the building unless it is located in a separate metering or regulating building.

(3) Customer meters and regulators: protection from damage.

(a) Protection from vacuum or back pressure. If the customer's equipment might create either a vacuum or a back pressure, a device shall [must] be installed to protect the system.

(b) Service regulator vents and relief vents. Service regulator vents and relief vents shall terminate outdoors, and the outdoor terminal shall be: [The outside terminal of each service regulator vent and relief vent must:]

1. [Be] Rain and insect resistant;

2. [Be] Located at a place where gas from the vent can escape freely into the atmosphere and away from any opening into the building; and

3. [Be] Protected from damage caused by submergence in areas where flooding may occur.

(c) Pits and vaults. Each pit or vault that houses a customer meter or regulator at a place where vehicular traffic is anticipated shall [must] be able to support that traffic.

(4) Customer meter and regulators: installation.

(a) Each meter and each regulator shall [must] be installed [so as] to minimize anticipated stresses upon the connecting piping and the meter.

(b) [The] Use of all thread (close) nipples is prohibited.

(c) Connections made of lead or other easily damaged material shall [may] not be used in [the] installation of meters or regulators.

(d) Each regulator that might release gas in its operation shall [must] be vented to the outside atmosphere and shall have a vent pipe sized no smaller than the manufacturer's vent connection built into the regulator.

(5) Customer meter installation: operation pressure.

(a) A meter shall [may] not be used at [a] pressure [that is] more than sixty-seven (67) percent of the manufacturer's shell test pressure.

(b) Each newly installed meter manufactured after November 12, 1970, shall [must] have been tested to a minimum of ten (10) psig.

(c) A rebuilt or repaired tinned steel case meter shall [may] not be used at [a] pressure [that is] more than fifty (50) percent of the pressure used to test the meter after rebuilding or repairing.

(6) Service lines: installation.

(a) Depth. Each buried service line shall [must] be installed with at least twelve (12) inches of cover in private property and at least eighteen (18) inches of cover in streets and roads. However, where an underground structure prevents installation at those depths, the service line shall [must] be able to withstand any anticipated external load.

(b) Support and backfill. Each service line shall [must] be properly supported on undisturbed or well-compacted soil, and material used for backfill shall [must] be free of materials that could damage the pipe or its coating.

(c) Grading for drainage. Where condensation in the gas might cause interruption in [the] gas supply to the customer, the service line shall [must] be graded [so as] to drain into the main or into drips at [the] low points in the service line.

(d) Protection against piping strain and external loading. Each service line shall [must] be installed [so as] to minimize anticipated piping strain and external loading.

(e) Installation of service lines into buildings. Each underground service line installed below grade through the outer foundation wall of a building shall [must]:

1. If [In the case of] a metal service line, be protected against corrosion;

2. If [In the case of] a plastic service line, be protected from shearing action and backfill settlement; and

3. Be sealed at the foundation wall to prevent leakage into the building.

(f) Installation of service lines under buildings. Where an underground service line is installed under a building:

1. It shall [must] be encased in a gastight

conduit;

2. The conduit and the service line shall [must], if the service line supplies the building it underlies, extend into a normally usable and accessible part of the building; and

3. The space between the conduit and [the] service line shall [must] be sealed to prevent gas leakage into the building. [and,] If the conduit is sealed at both ends, a vent line from the annular space shall [must] extend to a point where gas would not be a hazard and extend above grade, terminating in a rain and insect resistant fitting.

(g) Joining of service lines. All underground steel service lines shall be joined by threaded and coupled joints, compression type fittings, or by qualified welding procedures and operators.

(h) When coated steel pipe is to be installed as a service line in a bore, care shall be exercised to prevent damage to the coating during installation. For all installations to be made by boring, driving or similar methods or in a rocky type soil, the following practices or their equivalents are recommended:

1. [The] Coated pipe should not be used as the bore pipe or drive pipe and left in the ground as part of the service line. It is preferable to make such installations by first making an average bore, removing the pipe used for boring and then inserting the coated pipe.

2. Coated steel pipe preferably should not be inserted through a bore in exceptionally rocky soil when there is a likelihood of damage to the coating resulting from [the] insertion.

3. [The] Recommendations in subparagraphs 1 and 2 of this subsection do not apply where coated pipe is installed under conditions where the coating is not likely to be damaged, such as in sandy soil.

(7) Service line: valve requirements.

(a) Each service line shall [must] have a service-line valve that meets [the] applicable requirements of Sections 2 and 4 of this regulation. A valve incorporated in a meter bar, that allows the meter to be bypassed, shall [may] not be used as a service-line valve.

(b) A soft seal service-line valve shall [may] not be used if its ability to control [the] flow of gas could be adversely affected by exposure to anticipated heat.

(c) Each service-line valve on a high-pressure service line, installed above ground or in an area where [the] blowing gas would be hazardous, shall [must] be designed and constructed to minimize the possibility of [the] removal of the valve core [of the valve] with other than specialized tools.

(8) Service lines: location of valves.

(a) Relation to regulator or meter. Each service-line valve shall [must] be installed upstream of the regulator or, if there is not regulator, upstream of the meter.

(b) Outside valves. Each service line shall [must] have a shutoff valve in a readily accessible location that, if feasible, is outside of the building.

(c) Underground valves. Each underground service-line valve shall [must] be located in a covered, durable curb box or standpipe that allows ready operation of the valve. The curb box shall be supported independently of the service lines.

(9) Service lines general requirements for connections to main piping.

(a) Location. Each service-line connection to a main shall [must] be located at the top of the main, or, if [that is] not practical, at the side of the main, unless a suitable protective device is installed to minimize [the] possibility of dust and moisture being carried from the main into the service line.

(b) Compression-type connection to main. Each compression-type service line to main connection shall [must]:

1. Be designed and installed to effectively sustain [the] longitudinal pullout or thrust forces caused by contraction or expansion of [the] piping, or by anticipated external or internal loading; and

2. If gaskets are used in connecting the service line to the main connection fitting, [have] gaskets shall be [that are] compatible with the kind of gas in the system.

(10) Service lines: connection to cast iron or ductile iron mains.

(a) Each service line connected to a cast iron or ductile iron main shall [must] be connected by a mechanical clamp, by drilling and tapping the main, or by another method meeting [the] requirements of Section 6(2) of this regulation.

(b) If a threaded tap is being inserted, the requirements of Section 4(6)(b) and (c) of this regulation shall [must] also be met.

(11) Service lines: steel. Each steel service line to be operated at less than 100 psig shall [must] be constructed of pipe designed for a minimum of 100 psig.

(12) Service lines: cast iron and ductile iron. Cast or ductile iron pipe shall [may] not be installed for service lines.

(13) Service lines: plastic.

(a) Each plastic service line outside a building shall [must] be installed below ground level, except that it may terminate above ground and outside the building, if:

1. The above ground part of the plastic service line is protected against deterioration and external damage; and

2. The plastic service line is not used to support external loads.

(b) Each plastic service line inside a building shall [must] be protected against external damage.

(14) Service lines: copper. Each copper service line installed within a building shall [must] be protected against external damage.

(15) New service lines not in use. Each service line [that is] not placed in service upon completion of installation shall [must] comply with one (1) of the following until the customer is supplied with gas:

(a) The valve that is closed to prevent [the] flow of gas to the customer shall [must] be provided with a locking device or other means designed to prevent [the] opening of the valve by persons other than those authorized by the operator.

(b) A mechanical device or fitting that will prevent [the] flow of gas shall [must] be installed in the service line or in the meter assembly.

(c) The customer's piping shall [must] be physically disconnected from the gas supply, and the open pipe ends sealed.

(16) Extension of services.

(a) Normal extension. An extension of 100 feet or less shall be made by a utility to an existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more

and provides guarantee for such service.

(b) Other extensions.

1. When an extension of the utility's main to serve an applicant or group of applicants amounts to more than 100 feet per customer, the utility shall [may], if not inconsistent with its filed tariff, require the total cost of the excessive footage over 100 feet per customer to be deposited with the utility by the applicant(s) [or the applicants], based on [the] average estimated cost per foot of the total extension.

2. Each customer receiving service under such extension will be reimbursed under the following plan: each year for a refund period of not less than ten (10) years, [which, for the purpose of this rule, shall be the refund period,] the utility shall refund to the customer(s) [or customers] who paid for the excessive footage, the cost of [the] 100 feet of [the] extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom. [, but in no case shall the] Total amount refunded shall not exceed the amount paid to the utility. After the end of the refund period, no refund shall [will] be required [to be made].

(c) An applicant desiring an extension to a proposed real estate subdivision may be required to pay all [the entire] costs of the extension. Each year for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of [the] 100 feet of [the] extension installed for each additional customer connected during the year. [but in no case shall the] Total amount refunded shall not exceed the amount paid to the utility. After the end of the refund period from the completion of the extension, no refund shall [will] be required [to be made].

(d) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission.

(e) Nothing contained herein shall be construed [as] to prohibit a utility from making, at its expense, greater extensions than herein prescribed, [should its judgment so dictate,] provided the same free extensions are made to other customers under similar conditions.

(f) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 100 feet upon a finding by the commission that such extension is reasonable.

(17) Service connections.

(a) Ownership of service lines.

1. Utility's responsibility. In urban areas with well defined streets, the utility shall furnish and install at its own expense, for the purpose of connecting its distribution system to [the] customer['s] premises, that portion of [the] service pipe from its main to the property line or to and including the curb stop and curb box if used. The curb stop may be installed at a convenient place between [the] property line and [the] curb. If [In cases where] meters are located outdoors, the curb box and curb stop may be omitted if [the] meter installation is provided with a stopcock and [the] connection to the distribution main is made with a service tee that incorporates a positive shutoff device that can be operated with ordinary, readily available tools and the service tee is not located under pavement.

2. Customer's responsibility. The customer, or the company at its option and with commission approval, shall furnish and lay [the] necessary pipe to make the connection from [the] curb stop to [the] place of consumption and shall keep the service line in good repair and in accordance with [such] reasonable requirements of the utility's rules and the commission's regulations [and/or the commission as may be incorporated in their rules and regulations].

3. Inspection. In the installation of a service line, the customer shall not install any tees or branch connections and shall [must] leave the trench open and pipe uncovered until it is examined by an inspector of the utility and shown to be free from any irregularity or defect. The utility shall test all piping downstream from the meter for gas leaks, each time [the] gas is turned on by the utility, by observing that no gas passes through the meter when all appliances are turned off. The utility shall refuse to serve until all gas leaks so disclosed have been properly repaired.

4. Location of service. The customer's service line shall extend to that point on the curb line easiest of access to the utility from its distribution system. When a reasonable doubt exists as to the proper location of the service line, the utility shall be consulted and its approval of the location secured.

(b) All services shall be equipped with a stopcock near the meter. If the service is not equipped with an outside shutoff, the inside shutoff shall be of a type which can be sealed in the off position.

Section 10. Requirements for Corrosion Control. (1) Scope. This subsection prescribes minimum requirements for [the] protection of metallic pipelines from external, internal, and atmospheric corrosion.

(2) Applicability to converted pipelines. Notwithstanding the date the pipeline was installed or any earlier deadlines for compliance, each pipeline which qualifies for use under this regulation in accordance with Section 1(7) of this regulation shall [must] meet the requirements of this subsection specifically applicable to pipelines installed before August 1, 1971, and all other applicable requirements within one (1) year after the pipeline is readied for service. However, the requirements of this section specifically applicable to pipelines installed after July 31, 1971, apply if the pipeline substantially meets those requirements before it is readied for service or it is a segment which is replaced, relocated, or substantially altered.

(3) General. Each operator shall establish procedures to implement the requirements of this section. These procedures, including those for [the] design, installation, operation and maintenance of cathodic protection systems, shall [must] be carried out by, or under the direction of a person qualified by experience and training in pipeline corrosion control methods.

(4) External corrosion control: buried or submerged pipelines installed after July 31, 1971.

(a) Except as provided in paragraphs (b), (c), and (f) of this subsection, each buried or

submerged pipeline installed after July 31, 1971, shall [must] be protected against external corrosion, including the following:

1. It shall [must] have an external protective coating meeting the requirements of subsection (7) of this section.

2. It shall [must] have a cathodic protection system designed to protect the pipeline in its entirety in accordance with this subsection, installed and placed in operation within one (1) year after completion of construction.

(b) An operator need not comply with paragraph (a) of this subsection if the operator can demonstrate by tests, investigation, or experience in the area of application, including, as a minimum, soil resistivity measurements and tests for corrosion accelerating bacteria, that a corrosive environment does not exist. However, within six (6) months after an installation made pursuant to the preceding sentence, the operator shall conduct tests, including pipe-to-soil potential measurements with respect to either a continuous reference electrode or an electrode using close spacing, not to exceed twenty (20) feet, and soil resistivity measurements at potential profile peak locations, to adequately evaluate the potential profile along the entire pipeline. If the tests [made] indicate that a corrosive condition exists, the pipeline shall [must] be cathodically protected in accordance with paragraph (a)2 of this subsection.

(c) An operator need not comply with paragraph (a) of this subsection, if the operator can demonstrate by tests, investigation, or experience that:

1. For a copper pipeline, a corrosive environment does not exist; or

2. For a temporary pipeline with an operating period of service not to exceed five (5) years beyond installation, corrosion during the five (5) year period of service of the pipeline will not be detrimental to public safety.

(d) Notwithstanding the provisions of paragraphs (b) or (c) of this subsection, if a pipeline is externally coated, it shall [must] be cathodically protected in accordance with paragraph (a)2 of this subsection.

(e) Aluminum shall [may] not be installed in [a] buried or submerged pipeline if that aluminum is exposed to an environment with a natural pH in excess of eight (8), unless tests or experience indicate its suitability in the particular environment involved.

(f) This subsection does not apply to electrically isolated, metal alloy fittings in plastic pipelines if:

1. For the size fitting used, an operator can show by tests, investigation, or experience in the area of application that adequate corrosion control is provided by alloyage; and

2. The fitting is designed to prevent leakage caused by localized corrosion pitting.

(5) External corrosion control: buried or submerged pipelines installed before August 1, 1971.

(a) Except for buried piping at compressor, regulator, and measuring stations, each buried or submerged transmission line installed before August 1, 1971, that has an effective external coating shall [must] be cathodically protected along the entire area that is effectively coated, in accordance with this section. For the purposes of this section, [a] pipeline does not have [an] effective external coating if its cathodic protection current requirements are substantially the same as if it were bare. The operator shall make tests to determine [the] cathodic protection current requirements.

(b) Except for cast iron or ductile iron, each of the following buried or submerged pipelines installed before August 1, 1971, shall [must] be cathodically protected in accordance with this section in areas in which active corrosion is found:

1. Bare or ineffectively coated transmission lines.

2. Bare or coated pipes at compressor, regulator, and measuring stations.

3. Bare or coated distribution lines. The operator shall determine [the] areas of active corrosion by electrical survey, or where electrical survey is impractical, by [the] study of corrosion and leak history records, [by] leak detection survey, or [by] other means.

(c) For the purpose of this section, active corrosion means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety.

(6) External corrosion control: examination of buried pipeline when exposed. Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion shall [must] be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If external corrosion is found, remedial action shall [must] be taken to the extent required by subsection (18) of this section and [the] applicable paragraphs of subsections (19), (20) or (21) of this section.

(7) External corrosion control: protective coating.

(a) Each external protective coating, whether conductive or insulating, applied for [the purpose of] external corrosion control shall [must]:

1. Be applied on a properly prepared surface;

2. Have sufficient adhesion to the metal surface to effectively resist underfilm migration of moisture;

3. Be sufficiently ductile to resist cracking;

4. Have sufficient strength to resist damage due to handling and soil stress; and

5. Have properties compatible with any supplemental cathodic protection.

(b) Each external protective coating which is an electrically insulating type shall [must] also have low moisture absorption and high electrical resistance.

(c) Each external protective coating shall [must] be inspected just prior to lowering the pipe into the ditch and backfilling, and any damage [detrimental] to effective corrosion control shall [must] be repaired.

(d) Each external protective coating shall [must] be protected from damage resulting from adverse ditch conditions or [damage from] supporting blocks.

(e) If coated pipe is installed by boring, driving, or other similar method, precautions shall [must] be taken to minimize damage to the coating during installation.

(8) External corrosion control: cathodic protection.

(a) Each cathodic protection system required by this subsection shall [must] provide a level of cathodic protection that complies with one (1) or more of the applicable criteria contained in Appendix D of this regulation. If none of

these criteria is applicable, the cathodic protection system shall [must] provide a level of cathodic protection at least equal to that provided by compliance with one (1) or more of these criteria.

(b) If amphoteric metals are included in a buried or submerged pipeline containing a metal of different anodic potential:

1. [The] Amphoteric metals shall [must] be electrically isolated from the remaining [der of the] pipeline and cathodically protected; or

2. The entire buried or submerged pipeline shall [must] be cathodically protected at a cathodic potential that meets the requirements of Appendix D of this regulation for amphoteric metals.

(c) The amount of cathodic protection shall [must] be controlled [so as not] to prevent damage to [the] protective coating or [the] pipe.

(9) External corrosion control: monitoring.

(a) Each pipeline that is under cathodic protection shall [must] be tested at least once each calendar year but with intervals not exceeding fifteen (15) months to determine whether the cathodic protection meets the requirements of subsection (8) of this section. However, if tests at those intervals are impractical for separately protected short sections of mains or transmission lines, not in excess of 100 feet, or separately protected service lines, these pipelines may be surveyed on a sampling basis. At least ten (10) percent of these protected structures, distributed over the entire system shall [must] be surveyed each calendar year, with a different ten (10) percent checked each subsequent year, so that the entire system is tested in each ten (10) year period.

(b) Each cathodic protection rectifier or other impressed current power source shall [must] be inspected six (6) times each calendar year, but with intervals not exceeding two and one-half (2 1/2) months, to insure that it is operating.

(c) Each reverse current switch, [each] diode, and [each] interference bond whose failure would jeopardize structure protection shall [must] be electrically checked for proper performance six (6) times each calendar year, but with intervals not exceeding two and one-half (2 1/2) months. Each other interference bond shall [must] be checked at least once each calendar year, but with intervals not exceeding fifteen (15) months.

(d) Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring.

(e) After the initial evaluation required by subsection (4)(b) and (c) and subsection (5)(b) of this section, each operator shall, at intervals not exceeding three (3) years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subsection in areas in which active corrosion is found. The operator shall determine [the] areas of active corrosion by electrical survey, or where electrical survey is impractical, by [the] study of corrosion and leak history records, [by] leak detection survey, or [by] other means.

(10) External corrosion control: electrical isolation.

(a) Each buried or submerged pipeline shall [must] be electrically isolated from other underground metallic structures, unless the pipeline and [the] other structures are electrically interconnected and cathodically protected as a single unit.

(b) One (1) or more insulating devices shall [must] be installed where electrical isolation of a portion of a pipeline is necessary to facilitate [the] application of corrosion control.

(c) Except for unprotected copper inserted in ferrous pipe, each pipeline shall [must] be electrically isolated from metallic casings that are [a] part of the underground system. However, if isolation is not achieved because it is impractical, other measures shall [must] be taken to minimize corrosion of the pipeline inside the casing.

(d) Inspection and electrical tests shall [must] be made to assure that electrical isolation is adequate.

(e) An insulating device shall [may] not be installed in an area where a combustible atmosphere is anticipated unless precautions are taken to prevent arcing.

(f) Where a pipeline is located [in] close [proximity] to electrical transmission tower footings, ground cables or counterpoise, or in other areas where fault currents or unusual risk of lightning may be anticipated, it shall be protected [must be provided with protection] against damage due to fault currents or lightning, and protective measures shall [must] be taken at insulating devices. A study shall [must] be made in collaboration with the electric company on [the] common problems of corrosion and electrolysis and taking the following factors into consideration:

1. [The] Possibility of the pipeline carrying either unbalanced line currents or fault currents.

2. [The] Possibility of lightning or fault currents inducing voltages sufficient to puncture pipe coatings or pipe.

3. Cathodic protection of the pipeline, including location of ground beds, especially if the electric line is carried on steel towers.

4. Bonding connections between the pipeline and either the steel tower footings or [the] buried ground facilities or [the] groundwire of the overhead electric system.

(11) External corrosion control: test stations. Each pipeline under cathodic protection required by this subsection shall [must] have sufficient test stations or other contact points for electrical measurement to determine the adequacy of cathodic protection.

(12) External corrosion control: test leads.

(a) Each test lead wire shall [must] be connected to the pipeline [so as] to remain mechanically secure and electrically conductive.

(b) Each test lead wire shall [must] be attached to the pipeline [so as] to minimize stress concentration on the pipe.

(c) Each bared test lead wire and bared metallic area at point of connection to the pipeline shall [must] be coated with [an] electrical insulating material compatible with the pipe coating and [the] insulation on the wire.

(13) External corrosion control: interference currents.

(a) Each operator whose pipeline system is subjected to stray currents shall have in effect a continuing program to minimize [the] detrimental effects of such currents.

(b) Each impressed current type cathodic protection system or galvanic anode system shall [must] be designed and installed [so as] to

minimize any adverse effects on existing adjacent underground metallic structures.

(14) Internal corrosion control: general.

(a) Corrosive gas shall [may] not be transported by pipeline, unless the corrosive effect of the gas on the pipeline has been investigated and steps have been taken to minimize internal corrosion.

(b) Whenever any pipe is removed from a pipeline for any reason, the internal surface shall [must] be inspected for evidence of corrosion. If internal corrosion is found:

1. [The] Adjacent pipe shall [must] be investigated to determine the extent of internal corrosion;

2. Replacement shall [must] be made to the extent required by [the] applicable paragraphs of subsections (19), (20) and (21) of this section; and

3. Steps shall [must] be taken to minimize the internal corrosion.

(c) Gas containing more than one-tenth (0.1) grain of hydrogen sulfide per 100 standard cubic feet shall [may] not be stored in pipe-type or bottle-type holders.

(15) Internal corrosion control: monitoring. If corrosive gas is being transported, coupons or other suitable means shall [must] be used to determine [the] effectiveness of [the] steps taken to minimize internal corrosion. Each coupon or other means of monitoring internal corrosion shall [must] be checked two (2) times each calendar year, but with intervals not exceeding seven and one-half (7 1/2) months.

(16) Atmospheric corrosion control: general.

(a) Pipelines installed after July 31, 1971. Each aboveground pipeline or portion of [a] pipeline installed after July 31, 1971, [that is] exposed to the atmosphere shall [must] be cleaned and either coated or jacketed with [a] material suitable for [the] prevention of atmospheric corrosion. An operator need not comply with this paragraph, if the operator can demonstrate by test, investigation, or experience in the area of application, that a corrosive atmosphere does not exist.

(b) Pipelines installed before August 1, 1971. Each operator having an aboveground pipeline or portion of [a] pipeline installed before August 1, 1971, [that is] exposed to the atmosphere, shall:

1. Determine [the] areas of atmospheric corrosion on the pipeline;

2. If atmospheric corrosion is found, take remedial measures to the extent required by [the] applicable paragraphs of subsections (19), (20), or (21) of this section; and

3. Clean and either coat or jacket [the] areas of atmospheric corrosion on the pipeline with [a] material suitable for [the] prevention of atmospheric corrosion.

(17) Atmospheric corrosion control: monitoring. After meeting the requirements of subsection (16)(a) and (b) of this section, each operator shall, at intervals not exceeding three (3) years, reevaluate each pipeline [that is] exposed to the atmosphere and take protective [remedial] action whenever necessary [to maintain protection] against atmospheric corrosion.

(18) Remedial measures: general.

(a) Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion shall [must] have a properly prepared surface and shall [must] be provided with an external protective coating that meets the requirements of subsection (7) of this section.

(b) Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion shall [must] be cathodically protected in accordance with this section.

(c) Except for cast iron or ductile iron pipe, each segment of buried or submerged pipe [that is] required to be repaired because of external corrosion shall [must] be cathodically protected in accordance with this section.

(19) Remedial measures: transmission lines.

(a) General corrosion. Each segment of transmission line with general corrosion and with a remaining wall thickness less than that required for [the] maximum allowable operating pressure of the pipeline shall [must] be replaced or [the] operating pressure reduced commensurate with the strength of the pipe based on actual remaining wall thickness. However, if the area of general corrosion is small, the corroded pipe may be repaired. Corrosion pitting so closely grouped as to affect [the] overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

(b) Localized corrosion pitting. Each segment of transmission line pipe with localized corrosion pitting to a degree where leakage might result shall [must] be replaced or repaired, or [the] operating pressure shall [must] be reduced commensurate with the strength of the pipe, based on [the] actual remaining wall thickness in the pits.

(20) Remedial measures: distribution lines other than cast iron or ductile iron lines.

(a) General corrosion. Except for cast iron or ductile iron pipe, each segment of generally corroded distribution line pipe with [a] remaining wall thickness less than that required for [the] maximum allowable operating pressure of the pipeline, or [a] remaining wall thickness less than thirty (30) percent of the nominal wall thickness, shall [must] be replaced. However, if the area of general corrosion is small, the corroded pipe may be repaired. Corrosion pitting so closely grouped so as to affect [the] overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

(b) Localized corrosion pitting. Except for cast iron or ductile iron pipe, each segment of distribution line pipe with localized corrosion pitting to a degree where leakage might result shall [must] be replaced or repaired.

(21) Remedial measures: cast iron and ductile iron pipelines.

(a) General graphitization. Each segment of cast iron or ductile iron pipe on which general graphitization is found to a degree where [a] fracture or [any] leakage might result shall [must] be replaced.

(b) Localized graphitization. Each segment of cast iron or ductile iron pipe on which localized graphitization is found to a degree where [any] leakage might result, shall [must] be replaced or repaired, or sealed by internal sealing methods adequate to prevent or arrest [any] leakage.

(22) Corrosion control records.

(a) Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, other than unrecorded galvanic

anodes installed before August 1, 1971, and neighboring structures bonded to the cathodic protection system.

(b) Each of the following records shall [must] be retained for as long as the pipeline remains in service:

1. Each record or map required by paragraph (a) of this subsection.

2. Records of each test, survey, or inspection required by this subsection, in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist.

Section 11. Test Requirements. (1) Scope. This section prescribes minimum leak-test and strength-test requirements for pipelines.

(2) General requirements.

(a) No person shall [may] operate a new segment of pipeline, or return to service a segment of pipeline that has been relocated or replaced, until:

1. It has been tested in accordance with this section and Section 13(11) of this regulation to substantiate [the proposed] maximum allowable operating pressure; and

2. Each potentially hazardous leak has been located and eliminated.

(b) The test medium shall [must] be liquid, air, natural gas or inert gas that is:

1. Compatible with the material of which the pipeline is constructed;

2. Relatively free of sedimentary materials; and

3. Except for natural gas, nonflammable.

(c) Except as provided in subsection (3)(a) of this section, if air, natural gas or inert gas is used as the test medium, the following maximum hoop stress limitations apply:

Maximum Hoop Stress Permissible During Test

	Percent of Specified Minimum Yield			
Class Location	1	2	3	4
Test Medium Air or Inert Gas	80	75	50	40
Natural Gas	80	30	30	30

(d) Each joint [weld] used to tie-in a test segment of pipeline is excepted from specific [the] test requirements of this section, but it must be leak tested at not less than its operating pressure.

(3) Strength test requirements for steel pipeline to operate at [a] hoop stress of thirty (30) percent or more of SMYS:

(a) Except for service lines, each segment of [a] steel pipeline that is to operate at [a] hoop stress of thirty (30) percent or more of SMYS shall [must] be strength tested in accordance with this section to substantiate the proposed maximum allowable operating pressure. In addition, in a Class 1 or Class 2 location, if there is a building intended for human occupancy within 300 feet of a pipeline, a hydrostatic test shall [must] be conducted to a test pressure of at least 125 percent of maximum operating pressure on that segment of [the] pipeline within 300 feet of that [such a] building, but in no event may the test section be less than 600 feet unless the length of the newly installed or relocated pipe is less than 600 feet. However, if the buildings are evacuated while [the] hoop stress exceeds fifty (50) percent of SMYS, air or inert gas may be used as the test medium.

(b) In a Class 1 or Class 2 location, each compressor station, regulator station and measuring station shall [must] be tested to Class 3 location test requirements.

(c) Except as provided in paragraph (e) of this subsection, [the] strength test shall [must] be conducted by maintaining [the] pressure at or above the test pressure for at least eight (8) hours.

(d) If a component other than pipe is the only item being replaced or added to [a] pipeline, a strength test after installation is not required, if the manufacturer of the component certifies that:

1. The component was tested to at least the pressure required for the pipeline to which it is being added; or

2. The component was manufactured under a quality control system that ensures that each item manufactured is at least equal in strength to a prototype and that the prototype was tested to at least the pressure required for the pipeline to which it is being added.

(e) For fabricated units and short sections of pipe, for which a postinstallation test is impractical, a preinstallation strength test shall [must] be conducted by maintaining [the] pressure at or above [the] test pressure for at least four (4) hours.

(4) Test requirements for pipelines [and mains] to operate at [a] hoop stress less than thirty (30) percent of SMYS and at or above 100 psig. Except for service lines and plastic pipelines, each segment of [a] pipeline [that is] to be operated at [a] hoop stress less than thirty (30) percent of SMYS and at or above 100 psig shall [must] be tested in accordance with the following:

(a) The pipeline operator shall [must] use a test procedure that will insure discovery of all potentially hazardous leaks in the segment being tested.

(b) If, during the test, the segment is to be stressed to twenty (20) percent or more of SMYS, and natural gas, air or inert gas is the test medium:

1. A leak test shall [must] be made at [a] pressure between 100 psig and the pressure required to produce [a] hoop stress of twenty (20) percent of SMYS; or

2. The line shall [must] be walked to check for leaks while [the] hoop stress is held at approximately twenty (20) percent of SMYS.

(c) [The] Pressure shall [must] be maintained at or above [the] test pressure for at least one (1) hour.

(5) Test requirements for pipelines to operate [at or] below 100 psig. Except for service lines and plastic pipelines, each segment of [a] pipeline [that is] to be operated [at or] below 100 psig shall [must] be leak tested in accordance with the following:

(a) The test procedure used shall [must] ensure discovery of all potentially hazardous leaks in the segment being tested.

(b) Each main [that is] to be operated at less than one (1) psig shall [must] be tested to at least ten (10) psig and each main to be operated at or above one (1) psig shall [must] be tested to at least ninety (90) psig.

(6) Test requirements for service lines.

(a) Each segment of [a] service line (other than plastic) shall [must] be leak tested in accordance with this section before being placed in service. If feasible, the service-line

connection to the main shall [must] be included in the test; if not feasible, it shall [must] be given a leakage test at the operating pressure when placed in service.

(b) Each segment of [a] service line (other than plastic) intended to be operated at [a] pressure of at least one (1) psig but not more than forty (40) psig shall [must] be given a leak test at [a] pressure of not less than fifty (50) psig.

(c) Each segment of [a] service line (other than plastic) [intended] to be operated at pressures of more than forty (40) psig shall [must] be tested to the maximum operating pressure or ninety (90) psig, whichever is greater, except that each segment of [a] steel service line stressed to twenty (20) percent or more of SMYS shall [must] be tested in accordance with subsection (4) of this section.

(7) Test requirements for plastic pipelines.

(a) Each segment of [a] plastic pipeline shall [must] be tested in accordance with this subsection.

(b) The test procedure shall [must] insure discovery of all potentially hazardous leaks in the segment being tested.

(c) The test pressure shall [must] be at least 150 percent of [the] maximum operating pressure or fifty (50) psig, whichever is greater. However, [the] maximum test pressure shall [may] not be more than three (3) times the design pressure of the pipe.

(d) [The] Temperature of thermoplastic material shall [must] be no more than 100 degrees Fahrenheit during the test.

(8) Environmental protection and safety requirements.

(a) In conducting tests under this subsection, each operator shall insure that every reasonable precaution is taken to protect its employees and the general public during [the] testing. Whenever [the] hoop stress of the segment of [the] pipeline being tested will exceed fifty (50) percent of SMYS, the operator shall take all practicable steps to keep persons not working on the testing operation outside [of] the testing area until [the] pressure is reduced to or below the proposed maximum allowable operating pressure.

(b) The operator shall insure that the test medium is disposed of in a manner that will minimize damage to the environment.

(9) Records. Each operator shall make, and retain for the useful life of the pipeline, a record of each test performed under subsections (3) and (4) of this section. The record shall [must] contain at least the following information:

(a) [The] Operator's name, [the] name of [the] operator's employee responsible for making the test, and [the] name of any test company used.

(b) Test medium used.

(c) Test pressure.

(d) Test duration.

(e) Pressure recording charts, or other record of pressure readings.

(f) Elevation variations, whenever significant for the particular test.

(g) Leaks and failures noted and their disposition.

Section 12. Uprating. (1) Scope. This subsection prescribes minimum requirements for increasing maximum allowable operation pressures (uprating) for pipelines.

(2) General requirements.

(a) Pressure increases. Whenever provisions [the requirements] of this subsection require that an increase in operating pressure be made in increments, [the] pressure shall [must] be increased gradually, at a rate that can be controlled, and in accordance with the following:

1. At the end of each incremental increase, [the] pressure shall [must] be held constant while the entire segment of pipeline [that is] affected is checked for leaks.

2. Each leak detected shall [must] be repaired before a further pressure increase is made, except that a leak deemed nonhazardous [determined not to be potentially hazardous] need not be repaired, if it is monitored during [the] pressure increase and it does not become [potentially] hazardous.

(b) Records. Each operator who uprates a segment of pipeline shall retain for the life of the segment a record of each investigation required by this subsection, [of] all work performed, and [of] each pressure test conducted, in connection with the uprating.

(c) Written plan. Each operator who uprates a segment of pipeline shall establish a written procedure that will ensure compliance with [that] each applicable requirement of this subsection [is complied with].

(d) Limitation on increase in maximum allowable operating pressure. Except as provided in subsection (3) of this section, a new maximum allowable operating pressure established under this subsection shall [may] not exceed the maximum that would be allowed under this part for a new segment of pipeline constructed of the same materials in the same location.

(3) Uprating to a pressure that will produce [a] hoop stress of thirty (30) percent or more of SMYS in steel pipeline.

(a) Unless the requirements of this section have been met, no person shall [may] subject any segment of [a] steel pipeline to [an] operating pressure that will produce [a] hoop stress of thirty (30) percent or more of SMYS and that is above the established maximum allowable operating pressure.

(b) Before increasing operating pressure above [the] previously established maximum allowable operating pressure the operator shall:

1. Review the design, operation, and maintenance history, and previous testing of the segment of pipeline to [and] determine if [whether] the proposed increase is safe and consistent with the requirements of this part; and

2. Make any repairs, replacements, or alterations in the segment of pipeline that are necessary for safe operation at the increased pressure.

(c) After complying with paragraph (b) of this subsection, an operator may increase [the] maximum allowable operating pressure of a segment of pipeline constructed before September 12, 1970, to the highest pressure that is permitted under Section 13(11) of this regulation, using as test pressure the highest pressure subjected (either in a strength test or in actual operation).

(d) After complying with paragraph (b) of this subsection, an operator that does not qualify under paragraph (c) of this subsection may increase the previously established maximum allowable operating pressure if at least one (1) of the following requirements is met:

1. The segment of pipeline is successfully tested in accordance with the requirements of this part for a new line of the same material in the same location.

2. An increased maximum allowable operating pressure may be established for a segment of pipeline in a Class 1 location if the line has not previously been tested; and if:

a. It is impractical to test it in accordance with the requirements of this part;

b. The new maximum operating pressure does not exceed eighty (80) percent of that allowed for a new line of the same design in the same location; and

c. The operator determines that the new maximum allowable operating pressure is consistent with the condition of the segment of pipeline and the design requirements of this regulation.

(e) Where a segment of pipeline is uprated in accordance with paragraph (c) or (d) of this subsection, the increase in pressure shall [must] be made in increments that are equal to:

1. Ten (10) percent of the pressure before the uprating; or

2. Twenty-five (25) percent of [the] total pressure increase, whichever produces the fewer number of increments.

(4) Uprating: Steel pipelines to a pressure that will produce [a] hoop stress less than thirty (30) percent of SMYS; plastic, cast iron, and ductile iron pipelines.

(a) Unless [the] requirements of this subsection have been met, no person shall [may] subject:

1. A segment of steel pipeline to [an] operating pressure that will produce [a] hoop stress less than thirty (30) percent of SMYS and [that] is above the previously established maximum allowable operating pressure; or

2. A plastic, cast iron, or ductile iron pipeline segment to an operating pressure [that is] above the previously established maximum allowable operating pressure.

(b) Before increasing operation pressure above the previously established maximum allowable operating pressure, the operator shall:

1. Review the design, operation, and maintenance history of the segment of pipeline;

2. Make a leakage survey (if it has been more than one (1) year since the last survey) and repair any leaks that are found, except that a leak deemed nonhazardous [determined not to be potentially hazardous] need not be repaired, if it is monitored during the pressure increase and it does not become [potentially] hazardous;

3. Make any repairs, replacements, or alterations in the segment of pipeline that are necessary for safe operation at the increased pressure;

4. Reinforce or anchor offsets, bends and dead ends in pipe joined by compression couplings or bell and spigot joints to prevent failure of the pipe joint, if the offset, bend or dead end is exposed in an excavation;

5. Isolate the segment of pipeline in which [the] pressure is to be increased from any adjacent segment that will continue to be operated at [a] lower pressure; and

6. If the pressure in mains or service lines, or both, is to be higher than the pressure delivered to the customer, install a service regulator on each service line and test each regulator to determine that it is functioning. Pressure may be increased as necessary to test each regulator, after a regulator has been installed on each pipeline subject to the increased pressure.

(c) After complying with paragraph (b) of this subsection, the increase in maximum allowable operating pressure shall [must] be made in increments [that are] equal to ten (10) psig or twenty-five (25) percent of [the] total pressure increase, whichever produces the fewer number of increments. Whenever the requirements of paragraph (b)6 of this subsection apply, there shall [must] be at least two (2) approximately equal incremental increases.

(d) If records for cast iron or ductile iron pipeline facilities are not complete enough to determine stresses produced by internal pressure, trench loading, rolling loads, beam stresses, and other bending loads, in evaluating the level of safety of the pipeline when operating at the proposed increased pressure, [ascertain compliance with Section 3(9) and (10) of this regulation, as applicable,] the following procedures shall [must] be followed:

1. In estimating the stresses, if [the] original laying conditions cannot be ascertained, the operator shall assume[, when applying the design formulas of ANSI C101-67,] that cast iron pipe was supported on blocks with tamped backfill and[, when applying the design formulas of ANSI A21.50,] that ductile iron pipe was laid without blocks with tamped backfill.

2. Unless [the] actual maximum cover depth is known, the operator shall measure the actual cover in at least three (3) places where the cover is most likely to be greatest and shall use the greatest cover measured.

3. Unless [the] actual nominal wall thickness is known, the operator shall determine the wall thickness by cutting and measuring coupons from at least three (3) separate pipe lengths. The coupons shall [must] be cut from pipe lengths in areas where the cover depth is most likely to be [the] greatest. The average of all measurements taken must be increased by the allowance indicated in the following table:

	Allowance (inches)		
	Cast iron pipe		
Pipe size (inches)	Pit cast pipe	Centrifugally cast pipe	Ductile iron pipe
3-8	0.075	0.065	0.065
10-12	0.08	0.07	0.07
14-24	0.08	0.08	0.075
30-42	0.09	0.09	0.075
48	0.09	0.09	0.08
54-60	0.09		

[NOTE: The nominal wall thickness of the cast iron is the standard thickness listed in table 10 or table 11, as applicable, of ANSI C101-67 nearest the value obtained under this subparagraph. The nominal wall thickness of ductile iron pipe is the standard thickness listed in table 6 of ANSI A21.50 nearest the value obtained under this subparagraph.]

4. For cast iron pipe, unless the pipe manufacturing process is known, the operator shall assume that the pipe is pit cast pipe with [a] bursting tensile strength of 11,000 psig and [a] modulus of rupture of 31,000 psig.

Section 13. Operations. (1) Scope. This section prescribes minimum requirements for

[the] operation of pipeline facilities.

(2) General provisions.

(a) No person shall [may] operate a segment of pipeline unless it is operated in accordance with this section.

(b) Each operator shall establish a written operating and maintenance plan meeting the requirements of this regulation and keep records necessary to administer the plan.

(3) Essentials of operating and maintenance plan. Each operator shall include the following in its operating and maintenance plan:

(a) Instructions for employees covering operating and maintenance procedures during normal operations and repairs.

(b) Items required to be included by the provisions of Section 14 of this regulation.

(c) Specific programs relating to facilities presenting the greatest hazard to public safety either in an emergency or because of extraordinary construction or maintenance requirements.

(d) A program for conversion procedures, if conversion of a low-pressure distribution system to [a] higher pressure is contemplated.

(e) Provision for periodic inspections to ensure that operating pressures are appropriate for [the] class location.

(f) Instructions enabling personnel who perform operation and maintenance activities to recognize conditions that are potentially safety-related conditions subject to reporting requirements of 807 KAR 5:027, Section 12.

(4) Initial determination of class location and confirmation or establishment of maximum allowable operating pressure.

(a) Before April 15, 1971, each operator shall complete a study to determine for each segment of pipeline with [a] maximum allowable operating pressure that will produce [a] hoop stress that is more than forty (40) percent of SMYS:

1. The present class location of all such pipelines in its system; and

2. Whether [the] hoop stress corresponding to [the] maximum allowable operating pressure for each segment of pipeline is commensurate with the present class location.

(b) Each segment of pipeline that has been determined under paragraph (a) of this subsection to have an established maximum allowable operating pressure producing [a] hoop stress [that is] not commensurate with the class location of the segment of pipeline and that is found [to be] in satisfactory condition, shall [must] have the maximum allowable operating pressure confirmed or revised in accordance with subsection (6) of this section. [The] Confirmation or revision shall [must] be completed not later than December 31, 1974.

(c) Each operator required to confirm or revise an established maximum allowable operating pressure under paragraph (b) of this subsection shall, not later than December 31, 1971, prepare a comprehensive plan, including a schedule, for carrying out the confirmations or revisions. The comprehensive plan must also provide for confirmations or revisions determined to be necessary under subsection (5) of this section, to the extent that they are caused by changes in class locations taking place before July 1, 1973.

(5) Change in class location: required study. Whenever [an] increase in population density indicates a change in class location for a segment of [an] existing steel pipeline operating at hoop stress that is more than forty (40) percent of SMYS, or indicates that [the] hoop stress corresponding to the established maximum allowable operating pressure for a segment of existing pipeline is not commensurate with the present class location, the operator shall immediately make a study to determine:

(a) [The] Present class location for the segment involved;

(b) [The] Design, construction, and testing procedures followed in [the] original construction, and a comparison of these procedures with those required for the present class location by [the] applicable provisions of this part;

(c) [The] Physical condition of the segment to the extent it can be ascertained from available records;

(d) [The] Operating and maintenance history of the segment;

(e) [The] Maximum actual operating pressure and the corresponding operating hoop stress, taking pressure gradient into account, for the segment of pipeline involved; and

(f) [The] Actual area affected by the population density increase, and physical barriers or other factors which may limit further expansion of the more densely populated area.

(6) Change in class location: confirmation or revision of maximum allowable operating pressure. If [the] hoop stress corresponding to the established maximum allowable operating pressure of a segment of pipeline is not commensurate with [the] present class location, and the segment is in satisfactory physical condition, the maximum allowable operating pressure of that segment of pipeline shall [must] be confirmed or revised according to one (1) of the following requirements: [as follows:]

(a) If the segment involved has been previously tested in place for a period of not less than eight (8) hours, the maximum allowable operating pressure is eight-tenths (0.8) times the test pressure in Class 2 locations, 0.667 times the test pressure in Class 3 locations, or 0.555 times the test pressure in Class 4 locations. [to or at least ninety (90) percent of its SMYS for a period of not less than eight (8) hours, the maximum allowable operating pressure must be confirmed or reduced so that] The corresponding hoop stress will not exceed seventy-two (72) percent of SMYS of the pipe in Class 2 locations, sixty (60) percent of SMYS in Class 3 locations, or fifty (50) percent of SMYS in Class 4 locations.

(b) [If the segment involved has not been previously tested in place as described in paragraph (a) of this subsection,] The maximum allowable operating pressure shall [must] be reduced so that [the] corresponding hoop stress is not more than that allowed by this part for new segments of pipelines in the existing class location.

(c) [If] The segment [of pipeline] involved shall [has not been qualified for operation under paragraph (a) or (b) of this subsection, it must] be tested in accordance with [the] applicable requirements of Section 11 of this regulation, and its maximum allowable operating pressure shall [must] then be established according to the following criteria: [so as to be equal to or less than the following:]

1. [The] Maximum allowable operating pressure after the requalification test is eight-tenths

(0.8) times the test pressure for Class 2 locations, 0.667 times the test pressure for Class 3 locations, and 0.555 times the test pressure for Class 4 locations.

2. [The] Maximum allowable operating pressure confirmed or revised in accordance with this subsection, shall [may] not exceed [the] maximum allowable operating pressure established before [the] confirmation or revision.

3. [The] Corresponding hoop stress shall [may] not exceed seventy-two (72) percent of [the] SMYS of the pipe in Class 2 locations, sixty (60) percent of [the] SMYS in Class 3 locations, or fifty (50) percent of the SMYS in Class 4 locations.

(d) Confirmation or revision of the maximum allowable operating pressure of a segment of pipeline in accordance with this section does not preclude the application of Section 12(2) and (3) of this regulation.

(e) Confirmation or revision of [the] maximum allowable operating pressure that is required as a result of [a study under] subsection (5) of this section shall [must] be completed within eighteen (18) months of the change in class location. Pressure reduction under paragraphs (a) and (b) of this subsection within the eighteen (18) month period does not preclude establishing a maximum allowable operating pressure under paragraph (c) of this subsection at a later date. [as follows:]

[1. Confirmation or revision due to changes in class location that occur before July 1, 1973, must be completed not later than December 31, 1974.]

[2. Confirmation or revision due to changes in class location that occur on or after July 1, 1973, must be completed within eighteen (18) months of the change in class location.]

(7) Continuing surveillance.

(a) Each operator shall have a procedure to monitor [for continuing surveillance of] its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions.

(b) If a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with subsection (11)(a) and (b) of this section.

(8) Damage prevention program.

(a) Except for pipelines listed in paragraph (c) of this subsection, each operator of a buried pipeline shall carry out in accordance with this subsection a written program to prevent damage to that pipeline by excavation activities. For the purpose of this subsection, "excavating activities" include excavation, blasting, boring, tunneling, backfilling, [the] removal of aboveground structures by either explosive or mechanical means, and other earth moving operations. An operator may perform any [of the] duties required by paragraph (b) of this subsection through participation in a public service program, such as a "one-call" system, but such participation does not relieve the operator of responsibility for compliance with this subsection.

(b) The damage prevention program required by paragraph (a) of this subsection shall [must], at a minimum:

1. Include the identity, on a current basis, of persons who normally engage in excavation activities in the vicinity of [area in which] the pipeline [is located].

2. Provide for notification to [of] the public in the vicinity of the pipeline and actual notification to [of] the persons identified in paragraph (b)1 of this subsection [of the following] as often as needed to make them aware of the existence and purpose of the damage prevention program and how to learn the location of underground pipelines prior to excavation activities. [:]

[a. The program's existence and purpose; and]

[b. How to learn the location of underground pipelines before excavation activities are begun.]

3. Provide a means of receiving and recording notification of planned excavation activities.

4. If the operator has buried pipelines in the area of excavation activity, provide for actual notification to persons who give notice of their intent to excavate of [Provide for actual notification of persons who give notice of their intent to excavate of whether there are buried pipelines in the area of excavation activity and, if so, the type of] temporary marking to be provided and how to identify the markings.

5. Provide for temporary marking of buried pipelines near [in the area of] excavation activity before, as far as practical, [the] activity begins.

6. Provide [as follows] for frequent inspection of pipeline[s that] an operator has reason to believe could be damaged by excavation activities[:

a. The inspection must be done as frequently as necessary during and after the activities] to verify the integrity of the pipeline; and

[b.] in the case of blasting, any inspection shall [must] include leakage surveys.

(c) A damage prevention program under this subsection is not required for the following pipelines:

1. Pipelines in a Class 1 or 2 location.

2. Pipelines in a Class 3 location defined by Section 1(3)(d)2 of this regulation that are marked in accordance with Section 14(5) of this regulation.

3. Pipelines to which access is physically controlled by the operator.

4. Pipelines that are part of a petroleum gas system subject to Section 1(6) of this regulation or part of a distribution system operated by a person in connection with that person's leasing of real property or by a condominium or cooperative association.

(9) Emergency plans.

(a) Each operator shall establish written procedures to minimize [the] hazard resulting from a gas pipeline emergency. At a minimum, [the] procedures shall [must] provide for the following:

1. Receiving, identifying, and classifying notices of events which require immediate response by the operator.

2. Establishing and maintaining adequate means of communication with appropriate fire, police, and other public officials.

3. Prompt and effective response to a notice of each type of emergency, including gas, fire, explosion or natural disaster near or involving a building with gas pipeline or pipeline

facility. [the following:]

[a. Gas detected inside or near a building.]

[b. Fire located near or directly involving a pipeline facility.]

[c. Explosion occurring near or directly involving a pipeline facility.]

[d. Natural disaster.]

4. [The] Availability of personnel, equipment, tools, and materials, as needed at the scene of [an] emergency.

5. Actions directed toward protecting people first and then property.

6. Emergency shutdown and pressure reduction in any section of the operator's pipeline system necessary to minimize hazards to life or property.

7. Making safe any actual or potential hazard to life or property.

8. Notifying appropriate fire, police and other public officials of gas pipeline emergencies and coordinating with them, both planned responses and actual responses during an emergency.

9. Safely restoring any service outage.

10. Beginning action under subsection (10) of this section, if applicable, as soon after the end of the emergency as possible.

(b) Each operator shall:

1. Furnish its supervisors who are responsible for emergency action a copy of that portion of the latest edition of [the] emergency procedures established under paragraph (a) of this subsection as necessary for compliance with those procedures.

2. Train [the] appropriate operating personnel in [to assure that they are knowledgeable of the] emergency procedures and verify that [the] training is effective.

3. Review employee activities to determine whether [the] procedures were effectively followed in each emergency.

(c) Each operator shall establish and maintain liaison with appropriate fire, police, and other public officials to:

1. Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency;

2. Acquaint [the] officials with the operator's ability [in responding] to respond to a gas pipeline emergency;

3. Identify [the] types of gas pipeline emergencies of which the operator notifies [the] officials; and

4. Plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.

(d) Each operator shall establish a continuing educational program to enable customers, the public, appropriate governmental organizations, and person engaged in excavation-related activities to recognize a gas pipeline emergency for the purpose of reporting it to the operator or [the] appropriate public officials. The program and [the] media used shall [must] be as comprehensive as necessary to reach all areas in which the operator transports gas. The program shall [must] be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

(10) Investigation of failures. Each operator shall establish procedures for analyzing accidents and failure, including [the] selection of samples of the failed facility or equipment for laboratory examination, where appropriate, to [for the purpose of] determine [ing] the causes of the failure and to minimize [ing] the possibility of [a] recurrence.

(11) Maximum allowable operating pressure: steel or plastic pipelines.

(a) Except as provided in paragraph (c) of this subsection, no person shall [may] operate a segment of steel or plastic pipeline at a pressure that exceeds the lowest of the following:

1. [The] Design pressure of the weakest element in the segment, determined in accordance with Sections 3 and 4 of this regulation.

2. [The] Pressure obtained by dividing the pressure to which the segment was tested after construction as follows:

a. For plastic pipe in all locations, [the] test pressure is divided by a factor of one and five-tenths (1.5).

b. For steel pipe operated at 100 psig or more, [the] test pressure is divided by a factor determined in accordance with the following table:

Class Location	Segment Installed before 11/12/70	Segment Installed after 11/11/70	Converted under Section 1(8)
1	1.10	1.10	1.25
2	1.25	1.25	1.25
3	1.40	1.50	1.50
4	1.40	1.50	1.50

3. [The] Highest actual operating pressure to which the segment was subjected during the five (5) years preceding July 1, 1970, unless the segment was tested in accordance with paragraph (a)2 of this subsection after July 1, 1965, or the segment was uprated in accordance with Section 12 of this regulation.

4. For furnace butt welded steel pipe, [a] pressure equal to sixty (60) percent of the mill test pressure to which the pipe was subjected.

5. For steel pipe other than furnace butt welded pipe, [a] pressure equal to eighty-five (85) percent of the highest test pressure to which the pipe has been subjected, whether by mill test or by [the] post installation test.

6. [The] Pressure determined by the operator to be the maximum safe pressure after considering the history of the segment, particularly known corrosion and [the] actual operating pressure.

(b) No person shall [may] operate a segment to which paragraph (a)6 of this subsection is applicable, unless overpressure protective devices are installed on the segment to [in a manner that will] prevent [the] maximum allowable operating pressure from being exceeded, in accordance with Section 4(30) of this regulation.

(c) Notwithstanding [the] other requirements of this subsection, an operator may operate a segment of pipeline found to be in satisfactory condition, considering its operating and maintenance history, at the highest actual operating pressure to which the segment was subjected during the five (5) years preceding July 1, 1970.

(12) Maximum allowable operating pressure: high-pressure distribution systems.

(a) No person shall [may] operate a segment of high-pressure distribution system at a pressure that exceeds the lowest of the following

pressures, as applicable:

1. [The] Design pressure of the weakest element in the segment, determined in accordance with Sections 3 and 4 of this regulation.

2. Sixty (60) psig, for a segment of a distribution system otherwise designed to operate at over sixty (60) psig, unless [the] service lines in the segment are equipped with service regulators or other pressure limited devices in series that meet the requirements of Section 4(31)(c) of this regulation.

3. Twenty-five (25) psig, in segments of cast iron pipe in which there are unreinforced bell and spigot joints.

4. [The] Pressure limits to which a joint could be subjected without [the possibility of its] parting.

5. [The] Pressure determined by the operator to be maximum safe pressure after considering the history of the segment, particularly known corrosion and [the] actual operating pressures.

(b) No person shall [may] operate a segment of pipeline to which paragraph (a)5 of this subsection applies, unless overpressure protective devices are installed on the segment to [in a manner that will] prevent the maximum allowable operating pressure from being exceeded, in accordance with Section 4(30) of this regulation.

(13) Maximum and minimum allowable operating pressure: low-pressure distribution systems.

(a) No person shall [may] operate a low-pressure distribution system at a pressure high enough to make unsafe the operation of any connected and properly adjusted low-pressure gas burning equipment.

(b) No person shall [may] operate a low-pressure distribution system at a pressure lower than the minimum pressure at which the safe and continuing operation of any connected and properly adjusted low-pressure gas burning equipment can be assured.

(14) Standard pressure.

(a) All utilities supplying gas for light, heat, power or other purposes shall, subject to [the] approval of the commission, adopt and maintain a standard pressure as measured at the customer's meter outlet. In adopting such standard pressure the utility may divide its distribution system into districts and establish a separate standard pressure for each [such] district, or the utility may establish a single standard pressure for its distribution system as a whole.

(b) The standard pressure to be adopted as [herein] provided in this section shall be a part of the utility's schedule of rates and general rules and regulations.

(c) No change shall be made by a utility in [the] standard pressure or pressure adopted except in case of emergency.

(15) Allowable variations of standard service pressure.

(a) [The] Variations of standard pressure as established under the preceding rule shall not exceed the adopted pressure by more than fifty (50) percent plus or minus.

(b) A utility supplying gas shall not be deemed to have violated paragraph (a) of this subsection, if it can be shown that variations from said pressure are due to:

1. Use of gas by the customer in violation of contract under [of] the rules of the utility.

2. Infrequent fluctuations of short duration due to unavoidable conditions of operation.

(c) Allowable variations in standard pressure other than those covered by paragraph (a) of this subsection shall [will] be established by the commission when application is made and good cause shown for allowance [therefor].

(d) The gas pressures required above shall be maintained at the outlet of the meter [in such a manner] to provide safe and efficient utilization of gas in properly adjusted appliances supplied through adequately sized customer's facilities.

(16) Continuity of service.

(a) The utility shall keep a complete record of all interruptions on its entire system or on major divisions of its system [thereof]. The record shall show the cause of interruption, date, time, duration, remedy and steps taken to prevent recurrence. The commission shall be notified of major interruptions as soon as they come to the attention of the utility and a complete report made after restoration of service.

(b) [An] Interruption of service, as [the term is] used here, shall also mean the interval of time during which [the] pressure drops below fifty (50) percent of such adopted standard pressure on the entire system, or on one (1) or more entire major division or divisions for which an average standard pressure has been adopted.

(17) Odorization of gas.

(a) [A] Combustible gas in a distribution line shall [must] contain a natural odorant or be odorized so that at a concentration in air of one-fifth (1/5) of the lower explosive limit (approximately one (1) percent by volume), [the] gas is readily detectable by a person with a normal sense of smell.

(b) [A] Combustible gas in a transmission line in a Class 3 or Class 4 location shall [must] comply with the requirements of paragraph (a) of this subsection unless:

1. At least fifty (50) percent of the length of the line downstream from that location is in a Class 1 or Class 2 location;

2. The line transports gas to any of the following facilities which received gas without an odorant from that line before May 5, 1975:

a. [An] Underground storage field;

b. [A] Gas processing plant;

c. [A] Gas dehydration plant; or

d. [An] Industrial plant using gas in a process where [the] presence of an odorant[:

(i)] makes the end product unfit for the purpose for which it is intended;

[(ii)] reduces the activity of a catalyst; or

[(iii)] reduces the percentage completion of a chemical reaction.

3. When [In the case of] lateral line [which] transports gas to a distribution center, at least fifty (50) percent of the length of that line is in a Class 1 or Class 2 location.

(c) Odorant shall not be harmful to persons, materials, or pipe.

(d) [(c) The] Products of combustion from the odorant shall [may] not be toxic when breathed nor shall [may] they be corrosive or harmful to those materials to which the products of combustion will be exposed.

(e) [(d) The] Odorant shall [may] not be soluble in water to an extent greater than two and one-half (2.5) parts to 100 parts by weight.

(f) [(e)] Equipment for odorization shall [must] introduce [the] odorant without wide variations in the level of odorant.

(g) [(f)] Each utility shall conduct sampling of combustible gases to assure [the] proper concentration of odorant in accordance with this section unless otherwise approved by the commission.

1. The utility shall sample gases in each separately odorized system at approximate[ly the] furthest point from injection of [the] odorant.

2. Sampling shall be conducted with equipment designed to detect and verify [the] proper level of odorant.

3. Separately odorized systems with ten (10) or fewer customers shall be sampled for proper odorant level at least once each ninety-five (95) days.

4. Separately odorized systems with more than ten (10) customers shall be sampled for proper odorant level at least once each week.

(18) Tapping pipelines under pressure. Each tap made on a pipeline under pressure shall [must] be performed by a crew qualified to make hot taps.

(19) Purging of pipelines.

(a) When [a] pipeline is being purged of air by use of gas, the gas shall [must] be released into one (1) end of the line in a moderately rapid and continuous flow. If gas cannot be supplied in sufficient quantity to prevent the formation of a hazardous mixture of gas and air, a slug of inert gas shall [must] be released into the line before the gas.

(b) When [a] pipeline is being purged of gas by use of air, the air shall [must] be released into one (1) end of the line in a moderately rapid and continuous flow. If air cannot be supplied in sufficient quantity to prevent the formation of a hazardous mixture of gas and air, a slug of inert gas shall [must] be released into the line before the air.

Section 14. Maintenance. (1) Scope. This section prescribes minimum requirements for maintenance of pipeline facilities.

(2) General.

(a) No person shall [may] operate a segment of pipeline, unless it is maintained in accordance with this section.

(b) Each segment of pipeline that becomes unsafe shall [must] be replaced, repaired, or removed from service.

(c) Hazardous leaks must be repaired promptly.

(3) Transmission lines: patrolling.

(a) Each operator shall have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation.

(b) [The] Frequency of patrols is determined by [the] size of [the] line, [the] operating pressures, [the] class location, terrain, weather, and other relevant factors, but intervals between patrols shall [may] not be longer than prescribed in the following table:

	Maximum Interval Between Periods	
Class Location of Line	At Highway and Railroad Crossings	At All Other Places
1 & 2	7 1/2 months; but at least twice each calendar year	15 months; but at least once each calendar year
3	4 1/2 months; but at least four time each calendar year	7 1/2 months; but at least twice each calendar year
4	4 1/2 months; but at least four times each calendar year	4 1/2 months; but at least four times each calendar year

(4) Transmission lines: leakage surveys.

(a) Each operator of a transmission line shall provide for periodic leakage surveys of [the] line in its operating and maintenance plan.

(b) Leakage surveys of a transmission line shall [must] be conducted at intervals not exceeding fifteen (15) months; but at least once each calendar year. However, if a [in the case of a] transmission line [which] transports gas in conformity with Section 13(17) of this regulation without an odor or odorant, leakage surveys using leak detector equipment shall [must] be conducted;

1. In Class 3 locations, at intervals not exceeding seven and one-half (7 1/2) months; but at least twice each calendar year; and

2. In Class 4 locations, at intervals not exceeding four and one-half (4 1/2) months; but at least four (4) times each calendar year.

(5) Line markers for mains and transmission lines.

(a) Buried pipelines. Except as provided in paragraph (b) of this subsection, a line marker shall [must] be placed and maintained as close as practical over each buried main and transmission line:

1. At each crossing of a public road or [,] railroad[, and navigable waterway (for purposes of this section, navigable waterway is defined as any body of water on which travel commercial vessels)]; and

2. Wherever necessary to identify the location of the transmission line or main to reduce the possibility of damage or interference.

(b) Exceptions for buried pipelines. Line markers are not required for buried mains and transmission lines:

1. Located under inland navigable waters;

2. In Class 3 or Class 4 locations:

a. Where placement of a marker is impractical; or

b. Where a damage prevention program is in effect under Section 13(8) of this regulation; or

3. In the case of navigable waterway crossings, within 100 feet of a line marker placed and maintained at that waterway in accordance with this section.

(c) Pipelines above ground. Line markers shall [must] be placed and maintained along each section of a main and transmission line [that is] located above ground in an area accessible to the public.

(d) Markers other than at navigable waterways. The following shall [must] be written legibly on a background of sharply contrasting color on each line marker not placed at a navigable waterway:

1. The word "Warning," "Caution," or "Danger," followed by the words "Gas (or name of gas transported) Pipeline," all of which, except for markers in heavily developed urban areas, shall [must] be in letters at least one (1) inch high with one-quarter (1/4) inch stroke.

2. The name of the operator and [the]

telephone number (including area code) where the operator can be reached at all times.

(e) Markers at navigable waterways. Each line marker at a navigable waterway shall [must] have the following characteristics:

1. A rectangular sign[, rectangular in shape,] with a narrow strip along each edge, colored international orange, and the area between lettering on the sign and boundary strips colored white.

2. Written on the sign in block style, black letters:

a. The word "Warning," "Caution," or "Danger," followed by the words, "Do Not Anchor or Dredge" and the words, "Gas (or name of gas transported Pipeline Crossing;" and

b. The name of the operator and [the] telephone number (including area code) where the operator can be reached at all times.

3. In overcast daylight, the sign is visible and the writing required by paragraph (e)2a of this subsection is legible, from approaching or passing vessels that may damage or interfere with the pipeline.

(6) Transmission lines: recordkeeping. Each utility shall keep records covering each leak discovered, repair made, transmission line break, leakage survey, line patrol, and inspection, for as long as the segment of transmission line involved remains in service.

(7) Transmission lines: general requirements for repair procedures.

(a) Each utility shall take immediate temporary measures to protect the public whenever:

1. A leak, imperfection, or damage that impairs its serviceability is found in a segment of steel transmission line operating at or above forty (40) percent of [the] SMYS; and

2. It is not feasible to make a permanent repair at the time of discovery.

(a) As soon as feasible, the utility shall make permanent repairs.

(b) Except as provided in subsection (10)(a)3 of this section, no utility shall [may] use a welded patch as a means of repair.

(8) Transmission lines: permanent field repair of imperfections and damages.

(a) Except as provided in paragraph (b) of this subsection, each imperfection or damage that impairs [the] serviceability of a segment of steel transmission line operating at or above forty (40) percent of SMYS must be repaired as follows:

1. If it is feasible to take the segment out of service, the imperfection or damage must be removed by cutting out a cylindrical piece of pipe and replacing it with pipe of similar or greater design strength.

2. If it is not feasible to take the segment out of service, a full encirclement welded split sleeve of appropriate design shall [must] be applied over the imperfection or damage.

3. If the segment is not taken out of service, [the] operating pressure shall [must] be reduced to a safe level during [the] repairs [operation].

(b) Submerged pipelines in inland navigable waters may be repaired by mechanically applying a full encirclement split sleeve of appropriate design over the imperfection or damage.

(9) Transmission lines: permanent field repair of welds. Each weld that is unacceptable under Section 5(11)(c) of this regulation shall [must] be repaired as follows:

(a) If it is feasible to take the segment of transmission line out of service, the weld shall [must] be repaired in accordance with [the] applicable requirements of Section 5(13) of this regulation.

(b) A weld may be repaired in accordance with Section 5(13) of this regulation while the segment of transmission line is in service if:

1. The weld is not leaking;

2. [The] Pressure in the segment is reduced so that it does not produce a stress [that is] more than twenty (20) percent of [the] SMYS of the pipe; and

3. Grinding of the defective area can be limited so that at least one-eighth (1/8) inch thickness in the pipe weld remains.

(c) A defective weld which cannot be repaired in accordance with paragraph (a) or (b) of this subsection shall [must] be repaired by installing a full encirclement welded split sleeve of appropriate design.

(10) Transmission lines: permanent field repair of leaks.

(a) Except as provided in paragraph (b) of this subsection, each permanent field repair of a leak on a transmission line shall [must] be made as follows:

1. If feasible, the segment of transmission line shall [must] be taken out of service and repaired by cutting out a cylindrical piece of pipe and replacing it with pipe of similar or greater design strength.

2. If it is not feasible to take the segment of transmission line out of service, repairs shall [must] be made by installing a full encirclement welded split sleeve of appropriate design, unless the transmission line:

a. Is joined by mechanical couplings; and

b. Operates at less than forty (40) percent of SMYS.

3. If the leak is due to a corrosion pit, [the] repair may be made by installing properly designed bolt-on leak clamp. [s; or,] If the leak is due to a corrosion pit and on pipe of not more than 40,000 psi SMYS, [the] repair may be made by fillet welding over the pitted area a steel plate patch with rounded corners, of the same or greater thickness than the pipe, and not more than one-half (1/2) of the diameter of the pipe in size.

(b) Submerged pipelines in inland navigable waters may be repaired by mechanically applying a full encirclement split sleeve of appropriate design over the leak.

(11) Transmission lines: testing of repairs.

(a) Testing of replacement pipe.

[1.] If a segment of transmission line is repaired by cutting out the damaged portion of [the] pipe as a cylinder, [the] replacement pipe shall [must] be tested to the pressure required for a new line installed in the same location. This test may be made on pipe before it is installed.

[2. The test required by subparagraph 1 of this paragraph may be made on the pipe before it is installed, but all field girth butt welds that are not strength tested must be tested after installation by nondestructive tests meeting the requirements of Section 5(12) of this regulation.]

(b) Testing of repairs made by welding. Each repair made by welding in accordance with subsections (8), (9) and (10) of this section shall [must] be examined in accordance with Section 5(11) of this regulation.

(12) Distribution systems: patrolling.

(a) The frequency of patrolling mains shall [must] be determined by the severity of [the] conditions which could cause failure or leakage, and the consequent hazards to public safety.

(b) Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage shall [must] be patrolled at intervals not exceeding four and one-half (4 1/2) months, but at least four (4) times each calendar year.

(13) Distribution systems: leakage surveys and procedures.

(a) Each utility shall provide for periodic leakage surveys in its operating and maintenance plan.

(b) The type and scope of the leakage control program shall [must] be determined by the nature of the operations and [the] local conditions; but it shall [must] meet the following minimum requirements:

1. At least once each calendar year, but at intervals not exceeding fifteen (15) months, a gas detector survey shall be conducted in business districts, involving tests of the atmosphere in gas, electric, telephone, sewer and water system manholes, and where access is not denied at inside basement walls of public and commercial buildings located adjacent to gas mains and service lines, at cracks in pavement and sidewalks and at other locations providing an opportunity for finding gas leaks.

2. Leakage surveys of the distribution system outside of [the] principal business areas shall [must] be made as frequently as necessary, but at intervals not exceeding five (5) years.

(c) Each gas utility shall maintain a record for five (5) years of gas leaks reported by the public, utility employees, or detected by leak surveys. [This record shall be maintained for a period of five (5) years.]

(d) Each leak detected shall be graded according to the following standard:

1. Grade 1 - hazardous leaks. A leak that represents an existing or probable hazard to persons or property and requires immediate repair or continuous action until conditions are no longer hazardous.

2. Grade 2 - nonhazardous leaks. A leak that is recognized as being nonhazardous at time of detection but justifies scheduled repair based on probable future hazard.

3. Grade 3 - nuisance leaks. A leak that is nonhazardous at time of detection and can be reasonably expected to remain nonhazardous. Grade 3 leaks shall be monitored and reevaluated until the leak is regraded or no longer results in a reading.

[(e) Each of the above leak gradings shall be defined as follows:]

[1. Grade 1 - a leak that represents an existing or probable hazard to persons or property and requires immediate repair or continuous action until the conditions are no longer hazardous.]

[2. Grade 2 - a lead that is recognized as being nonhazardous at the time of detection but justifies scheduled repair based on probable future hazard.]

[3. Grade 3 - a leak that is nonhazardous at the time of detection and can be reasonably expected to remain nonhazardous. Grade 3 leaks shall be monitored and reevaluated until the leak is regraded or no longer results in a reading.]

(14) Test requirements for reinstating service lines.

(a) Except as provided in paragraph (b) of this subsection, each disconnected service line shall [must] be tested in the same manner as a new service line, before being reinstated.

(b) Each service line temporarily disconnected from the main shall [must] be tested from [the] point of disconnection to the service line valve in the same manner as a new service line, before reconnecting. However, if provisions are made to maintain continuous service, such as by installation of a bypass, any part of the original service line used to maintain continuous service need not be tested.

(15) Abandonment or inactivation of facilities.

(a) Each utility shall provide in its operating and maintenance plan for abandonment or deactivation of pipelines, including provisions for meeting each [of the] requirement of this subsection.

(b) Each pipeline abandoned in place shall [must] be disconnected from all sources and supplies of gas, purged of gas, and sealed at the ends. However, the pipeline need not be purged when the volume of gas is so small that there is not potential hazard.

(c) Except for service lines, each inactive pipeline [that is] not being maintained under this section shall [must] be disconnected from all sources and supplies of gas, purged of gas, and sealed at the ends. However, the pipeline need not be purged when the volume of gas is so small that there is not potential hazard.

(d) Whenever service to a customer is discontinued, one (1) of the following steps shall be taken [must be complied with]:

1. The valve that is closed to prevent [the] flow of gas to the customer shall [must] be provided with a locking device or other means designed to prevent [the] opening of the valve by persons other than those authorized by the utility.

2. A mechanical device or fitting that will prevent [the] flow of gas shall [must] be installed in the service line or in the meter assembly.

3. The customer's piping shall [must] be physically disconnected from the gas supply and the open pipe ends sealed.

(e) If air is used for purging, the utility shall insure that a combustible mixture is not present after purging.

(f) Each abandoned vault shall [must] be filled with [a] suitable compacted material.

(16) Compressor stations: procedures for gas compressor units. Each utility shall establish starting, operating, and shutdown procedures for gas compressor units.

(17) Compressor stations: inspection and testing of relief devices.

(a) Except for rupture discs, each pressure relieving device in a compressor station shall [must] be inspected and tested in accordance with subsections (21) and (23) of this section, and shall [must] be operated periodically to determine that it opens at the correct set pressure.

(b) Any defective or inadequate equipment found shall [must] be promptly repaired or replaced.

(c) Each remote control shutdown device shall [must] be inspected and tested at intervals not to exceed fifteen (15) months, but at least once each calendar year to determine that it functions properly.

(18) Compressor stations: isolation of equipment for maintenance or alterations. Each utility shall establish procedures for maintaining compressor stations, including provisions for isolating units or sections of pipe and for purging before returning to service.

(19) Compressor stations: storage of combustible materials.

(a) Flammable or combustible materials in quantities beyond those required for everyday use, or other than those normally used in compressor buildings, shall [must] be stored a safe distance from the compressor building.

(b) Above ground oil or gasoline storage tanks shall [must] be protected in accordance with National Fire Protection Association Standard No. 30.

(20) Pipe-type and bottle-type holders: plan for inspection and testing. Each utility having a pipe-type or bottle-type holder shall establish a plan for [the] systematic, routine inspection and testing of these facilities, including the following:

(a) Provision shall [must] be made for detecting external corrosion before [the] strength of the container has been impaired.

(b) Periodic sampling and testing of gas in storage shall [must] be made to determine the dew point of vapors contained in [the] stored gas, that if condensed, might cause internal corrosion or interfere with [the] safe operation of the storage plant.

(c) [The] Pressure control and pressure limiting equipment shall [must] be inspected and tested periodically to determine that it is in a safe operating condition and has adequate capacity.

(21) Pressure limiting and regulating stations: inspection and testing. Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment shall [must] be subjected, at intervals not exceeding fifteen (15) months, but at least once each calendar year, to inspections and tests to determine that it is:

(a) In good mechanical condition;

(b) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;

(c) Set to function at the correct pressure; and

(d) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

(22) Pressure limiting and regulating stations: telemetering or recording gauges.

(a) Each utility shall keep [continually] in continual use [on its distribution system or systems] one (1) or more accurate recording pressure gauges on its distribution systems. These gauges shall [must] be located at such [point or] points and in such [a] manner sufficient to reflect a continuous record of [the] gas pressure and character of service being furnished throughout the entire system [or systems].

(b) In addition to the recording pressure gauges required in paragraph (a) of this subsection, all utilities distributing gas shall maintain [provide themselves with] one (1) or more portable recording pressure gauges with which pressure surveys shall be made in sufficient number to indicate the service furnished and to satisfy the commission of the utility's compliance with pressure requirements.

(c) All recording pressure [gauge] charts or records shall be preserved and filed in a systematic manner and each chart shall show [the] date and location when the record was made. All charts or records shall [must] be kept on file by the utility for [a period of] at least two (2) years.

(d) If there are indications of abnormally high or low-pressure, the regulator and [the] auxiliary equipment shall [must] be inspected and [the] necessary measures employed to correct any satisfactory operating conditions.

(23) Pressure limiting and regulating stations: testing of relief devices.

(a) If feasible, pressure relief devices (except rupture discs) shall [must] be tested in place, at intervals not exceeding fifteen (15) months, but at least once each calendar year, to determine that they have enough capacity to limit the pressure on the facilities to which they are connected to [the] desired maximum pressure.

(b) If a test is not feasible, review and calculation of the required capacity of the relieving device at each station shall [must] be made, at intervals not exceeding fifteen (15) months, but at least once each calendar year. [and] These required capacities shall be compared with the rated or experimentally determined relieving capacity of the device for [the] operating conditions under which it works. After initial calculations, subsequent calculations are not required if review documents show that parameters have not changed to cause capacity to be less than required.

(c) If the relieving device is of insufficient capacity, a new or additional device shall [must] be installed to provide the additional capacity required.

(24) Valve maintenance: transmission lines. Each transmission line valve that might be required during any emergency shall [must] be inspected and partially operated, at intervals not exceeding fifteen (15) months, but at least once each calendar year.

(25) Valve maintenance: distribution systems. Each valve, the use of which may be necessary for [the] safe operation of a distribution system, shall [must] be checked and serviced, at intervals not exceeding fifteen (15) months, but at least once each calendar year.

(26) Vault maintenance.

(a) Each vault housing pressure regulating and pressure limiting equipment, and having [a] volumetric internal content of 200 cubic feet or more, shall [must] be inspected at intervals not exceeding fifteen (15) months, but at least once each calendar year to determine that it is in good physical condition and adequately ventilated.

(b) Inspection of each vault, its cover, and equipment shall include checks for proper ventilation, function, and safety. Any leaks or other deficiencies shall be corrected immediately. [If gas is found in the vault, the equipment in the vault must be inspected for leaks, and any leaks found must be repaired.]

[(c) The ventilating equipment must also be inspected to determine that it is functioning properly.]

[(d) Each vault cover must be inspected to assure that it does not present a hazard to public safety.]

(27) Prevention of accidental ignition. Each utility shall take steps to minimize the danger

of accidental gas ignition [of gas] in any structure or area where [the] presence of gas constitutes a hazard of fire or explosion, including the following:

(a) When a hazardous amount of gas is being vented into open air, each potential source of ignition shall [must] be removed from the area and a fire extinguisher shall [must] be provided.

(b) Gas or electric welding or cutting shall [may] not be performed on pipe or on pipe components that contain a combustible mixture of gas and air in the area of work.

(c) Post warning signs, where appropriate.

(d) When a pipeline or main can be kept full of gas during a welding or cutting operation, the following procedures are recommended:

1. Keep a [slight] flow of gas moving toward the point where cutting or welding is being done.

2. [The] Gas pressure at the site of [the] work shall be controlled by suitable material.

3. Close all slots or open ends immediately after they are cut, with tape, [and/or] rightly fitting canvas, or other suitable means.

4. No [Do not permit] two (2) openings shall [to] remain uncovered at the same time. [This is doubly important if the two (2) openings are at different elevations.]

(e) No welding or acetylene cutting shall [may] be done on a pipeline, main or auxiliary apparatus that contains air if it is connected to a source of gas, unless a suitable means has been provided to prevent [the] leakage of gas into the pipeline or main.

(f) In situations where welding or cutting must be done on facilities which are filled with air and connected to a source of gas and precautions recommended above cannot be taken, one (1) or more of the following precautions, depending upon circumstances at the job, are required:

1. Purging [the] pipe or equipment upon which welding or cutting is to be done, with combustible gas or inert gas.

2. Testing of the atmosphere in the vicinity of the zone to be heated before [the] work is started and at intervals as the work progresses, with a combustible gas indicator or by other suitable means.

3. Careful verification before [the] work starts that [the] valves that isolate the work from a source of gas do not leak.

(g) When the main is to be separated a bonding conductor shall [must] be installed across the point of separation and maintained while the pipeline is separated. If overhead electric transmission lines parallel the pipeline right-of-way, the current carrying capacity of the bonding conductor should be at least one-half (1/2) of the capacity of the overhead line conductors.

(h) For additional purging procedures see A.G.A. publication "Purging Principals and Practices" (1975 Edition.)

(28) Caulked bell and spigot joints.

(a) Each cast iron caulked bell and spigot joint [that is] subject to pressures of twenty-five (25) psig or more shall [must] be sealed with:

1. A mechanical leak clamp; or

2. A material or device which:

a. Does not reduce [the] flexibility of the joint;

b. Permanently bonds, either chemically or mechanically, or both, with the bell and spigot metal surfaces or adjacent pipe metal surfaces; and

c. Seals and bonds in a manner that meets the strength, environmental, and chemical compatibility requirements of Section 2(2)(a) and (b) and Section 4(2) of this regulation.

(b) Each cast iron caulked bell and spigot joint [that is] subject to pressures of less than twenty-five (25) psig and [is] exposed for any reason, shall [must] be sealed by [a] means other than caulking.

(29) Protecting cast iron pipelines. When a utility has knowledge that the support for a segment of a buried cast iron pipeline is disturbed:

(a) That segment of [the] pipeline shall [must] be protected[, as necessary,] against damage during the disturbance by:

1. Vibrations from heavy construction equipment, trains, trucks, buses, or blasting;

2. Impact forces by vehicles;

3. Earth movement;

4. Apparent future excavations near the pipeline; or

5. Other foreseeable outside forces which may subject that segment of [the] pipeline to bending stress.

(b) As soon as feasible, [appropriate steps must be taken to provide] permanent protection shall be provided for the disturbed segment from damage that might result from external loads, including compliance with applicable requirements of subsections (10)(a) and (11) of Section 7 and subsection (6)(b) through (d) of Section 9 of this regulation.

Section 15. Purity of Gas. (1) All gas supplied to customers shall contain no more than: a trace of hydrogen sulfide, thirty (30) grains of total sulphur per 100 cubic feet; or five (5) grains of ammonia per 100 cubic feet. No gas shall contain impurities which may cause excessive corrosion of mains or piping or form corrosive or harmful fumes when burned in a properly designed and adjusted burner.

(2) When necessary, tests for the presence of hydrogen sulfide shall be made at least once each day, except Sundays and holidays, with the standard lead acetate paper method. Results of [shown by] these test papers shall be properly recorded and filed, as specified by the commission.

(3) Manufactured and mixed gas shall be tested at least once each month for the presence of total sulphur and ammonia, except that any gas containing no coal gas need not be tested for ammonia. Approved methods of testing shall be used. Records of all tests shall be preserved as specified by the commission.

Section 16. Heating Value of Gas. (1) Definitions of heating value. The heating value of [a] gas is the number of British Thermal Units (BTUs) produced by the combustion at constant pressure, of that amount of gas which would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit, if saturated with water vapor and under [a] pressure equivalent to [that of] thirty (30) inches of mercury [(the mercury being] at a temperature of thirty-two (32) degrees Fahrenheit and under gravity[)], with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air, and when the water formed by combustion is condensed to

[the] liquid stage.

(2) Each utility shall establish and maintain a standard heating value for its gas. The heating value standard adopted shall comply with the following:

(a) It shall be consistent with good service.

(b) It shall be that value which the utility determines is [the] most practical and economical to supply to its customers.

(3) Each utility shall file with the commission its standard heating value as part of its schedule of Rates, Rules and Regulations.

(4) The utility shall maintain the heating value of the gas with as little variation as [is] practicable, but this [such] variation shall not be more than five (5) percent above or [five (5) percent] below the established standard heating value.

(5) The heating value standard shall be the monthly average heating value of [the] gas [as] delivered to customers at any point within one (1) mile of the center of distribution, and shall be obtained in the following manner: [-the] results of all tests for heating value made on any day during the calendar month shall be averaged, and the average of all such daily averages shall be used in computing the monthly average.

(6) Each utility, selling more than 300,000,000 cubic feet of gas annually, shall maintain a calorimeter, gas chromatograph, or other [device or] equipment for testing the hearing value of [the] gas or shall retain the services of a competent testing laboratory approved by the commission. This testing [Such device or] equipment owned by the utility shall be subject to [the] approval of the commission and be made available for testing certification. Utilities served directly from a transmission line shall be exempt from this rule if there is [an] approved [device or] equipment for measuring the heating value of [the] gas maintained by the transmission company and if such [device or] equipment is available for testing and certification by the commission.

(7) Each utility shall conduct [make such] test and maintain necessary records to document [satisfy to the commission] that the requirements of this section are being met. Those utilities which bill on the basis of heating value shall, as part of its schedule of Rates, Rules and Regulations, file with the commission the schedule of tests and test procedure(s) it will conduct [in order] to determine the heating value of its gas.

(8) Any change in [the] heating value greater than that allowed in subsection (4) of this section shall not be made without [the] approval of the commission and without adequate notice to [the] affected customers. In such event, the utility shall make any adjustments to the customer's appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the customer.

[(9) Whenever the standard heating value of the gas supplied is changed sufficiently to necessitate readjustment of appliances, it shall be incumbent upon the utility to properly adjust the customer's appliances for the new heating value.]

[(10) Where any unusual conditions exist, any utility may apply to the commission to be relieved, in part, of the requirements of this section.]

Section 17. Waste. All practices in the production, distribution, consumption, or use of natural gas which are wasteful[, such as flambeau lights and the like,] are hereby expressly prohibited.

Section 18. Deviations from Rules. In special cases for good cause shown [upon application to and approved by] the commission may permit deviations from these rules.

APPENDIX A
INCORPORATED BY REFERENCE

I. List of Organizations and Addresses.
   A. American National Standards Institute (ANSI), 1430 Broadway, New York, N.Y. 10018.
   B. American Petroleum Institute (API), 1801 K Street N.W., Washington, D.C. 20006 or 300 Corrigan Tower Building, Dallas, Texas 75201.
   C. [The] American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.
   D. American Society for Testing and Material (ASTM), 1916 Race Street, Philadelphia, Pa. 19103.
   E. Manufacturers Standardization Society of the Valve and Fittings Industry (MSS), 5203 Leesburg Pike, Suite 502, Falls Church, Va. 22041.
   F. National Fire Protection Association (NFPA), Batterymarch Park, Quincy, Massachusetts 02269.

II. Documents incorporated by reference. Numbers in parenthesis indicate applicable editions.
   A. American Petroleum Institute:
      [(1) API Specification 5A "API Specification for Casing, Tubing, and Drill Pipe" (1979).]
      [(2) API Specification 6A "API Specification for Wellhead Equipment" (1979).]
      (1) [(3)] API Specification 6D "API Specification for Pipeline Valves" (1977).
      (2) [(4)] API Specification 5L "API Specification for Line Pipe" (1980).
      [(5) API Specification 5LS "API Specification for Spiral-Weld Line Pipe" (1980).]
      [(6) API Specification 5LX "API Specification for High-Test Line Pipe" (1980).]
      (3) [(7)] API Recommended Practice 5L1 "API Recommended Practice for Railroad Transportation of Line Pipe" (1972).
      (4) [(8)] API Standard 1104 "Standard for Welding Pipelines and Related Facilities" (17th Edition, 1988) [(1980)].
   B. [The] American Society for Testing and Materials:
      (1) ASTM Specification A53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (A53-79).
      (2) ASTM Specification A106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A106-79b).

[(3) ASTM Specification A134 "Standard Specification for Electric-Fusion (Arc)-Welded Steel Plate Pipe, Sizes 16 in. and over" (A134-74).]

[(4) ASTM Specification A135 "Standard Specification for Electric-Resistance-Welded Steel Pipe" (A135-79).]

[(5) ASTM Specification A139 "Standard Specification for Electric-Fusion (Arc)-Welded Steel Pipe (Sizes 4 in. and over" (A134-74).]

(3) [(6)] ASTM Specification A671 "Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (A671-77).

(4) [(7)] ASTM Specification A672 "Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (A672-79).

(5) [(8)] ASTM Specification A691 "Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (A169-79).

[(9) ASTM Specification A211 "Standard Specification for Spiral-Welded Steel or Iron Pipe" (A211-75).]

(6) [(10)] ASTM Specification A333 "Standard Specification for Seamless and Welded Steel Pipe for Low Temperature Service" (A333-79).

(7) [(11)] ASTM Specification A372 "Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels" (A372-78).

[(12) ASTM Specification A377 "Standard Specification for Grey Iron and Ductile Iron Pressure Pipe" (A377-79).]

(8) [(13)] ASTM Specification A381 "Standard Specification for Metal-Arc-Welded Steel Pipe for Use with High-Pressure Transmission Systems" (A381-79).

[(14) ASTM Specification A539 "Standard Specification for Electric Resistance-Welded Coiled Steel Tubing for Gas and Fuel Oil Lines" (A539-79).]

[(15) ASTM Specification B42 "Standard Specification for Seamless Copper Pipe, Standard Sizes" (B42-80).]

[(16) ASTM Specification B68 "Standard Specification for Seamless Copper Tube, Bright Annealed" (B68-80).]

[(17) ASTM Specification B75 "Standard Specification for Seamless Copper Tube" (B75-80).]

[(18) ASTM Specification B88 "Standard Specification for Seamless Copper Water Tube" (B88-80).]

[(19) ASTM Specification B251 "Standard Specification for General Requirements for Wrought Seamless Copper and Copper-Alloy Tube" (B251-76).]

(9) [(20)] ASTM Specification D638 "Standard Test Method for Tensile Properties of Plastic" (D368-77a).

(10) [(21)] ASTM Specification D900 "Standard Method Test for Caloric Value of Gaseous Fuels by the Water Flow Calorimeter" (D900-55-1974 Edition).]

(11) [(22)] ASTM Specification D2513 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings" (D2513-87 [91]).

(12) [(23)] ASTM Specification D2517 "Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings" (D2517-73) (Reapproved 1979).

C. [The] American National Standards Institute, Inc.:

[(1) ANSI A21.11 "Rubber-Gasket Joints for Ductile-Iron, and Gray Iron Pressure Pipe and Fittings" (A21.11-1979).]

[(2) ANSI A21.50 "Thickness Design of Ductile-Iron Pipe" (1976).]

[(3) ANSI A21.52 "Ductile-Iron Pipe, Centrifugally Cast, in Metal Molds or Sand-Lined Molds for Gas" (1976).]

(1) [(4)] ANSI B16.1 "Cast Iron Pipe Flanges and Flanged Fittings" (1975).

(2) [(5)] ANSI B16.5 "Steel Pipe Flanges and Flanged Fittings" (1977).]

[(6) ANSI B16.24 "Bronze Pipe Flanges and Flanged Fittings" (1979).]

[(7) ANSI B36.10 "Wrought Steel and Wrought Iron Pipe" (1979).]

[(8) ANSI C101-67 "Thickness Design of Cast-Iron Pipe" (C101-67-1977).]

D. [The] American Society of Mechanical Engineers:

(1) ASME Boiler and Pressure Code, Section VIII "Pressure Vessels Division I" (1977).

(2) ASME Boiler and Pressure Vessel Code, Section IX "Welding Qualifications" (1977).

E. Manufacturer's Standardization Society of the Valve and Fittings Industry:

[(1) MSS SP-25 "Standard Marking System for Valves, Fittings, Flanges, and Unions" (1978).]

(1) [(2)] MSS SP-44 "Steel Pipe Line Flanges" (1975).

[(3) MSS SP-70 "Cast-Iron Gate Valves, Flanged and Threaded Ends" (1976).]

[(4) MSS SP-71 "Cast-Iron Swing Check Valves, Flanged and Threaded Ends" (1976).]

[(5) MSS SP-78 "Cast-Iron Plug Valves" (1977).]

F. National Fire Protection Association:

(1) NFPA Standard 30 "Flammable and Combustible Liquids Code" (1977).

(2) NFPA Standard 54 "National Fuel Gas Code" (1980).

(3) NFPA Standard 58 "Standard for the Storage and Handling of Liquefied Petroleum Gases" (1979).

(4) NFPA Standard 59 "Standards for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants" (1979).

(5) NFPA Standard 59A "Storage and Handling Liquefied Natural Gas" (1979).

(6) "National Electrical Code" NFPA-70 (ANSI) (1978).

G. National Bureau of Standards:
(1) Circular No. 48 "Standard Methods of Gas Testing" (1916).
(2) Research Paper No. 1741 "Testing Large Capacity Rotary Gas Meters," National Bureau of Standards Journal of Research, September, 1946.

APPENDIX B
QUALIFICATION OF PIPE

I. Listed Pipe Specifications. Numbers in parentheses indicate applicable editions.

API 5L - Steel Pipe (1980).
[API 5LS - Steel Pipe (1980).
API 5LX - Steel Pipe (1980).]
ASTM A53 - Steel Pipe (1979).
ASTM A106 - Steel Pipe (1979).
[ASTM A134 - Steel Pipe (1974).
ASTM A135 - Steel Pipe (1979).
ASTM A139 - Steel Pipe (1974).
ASTM A211 - Steel and Iron Pipe (1975).]
ASTM A333 - Steel Pipe (1979).
[ASTM A377 - Cast Iron Pipe (1979).]
ASTM A381 - Steel Pipe (1979).
[ASTM A539 - Steel Tubing (1979).]
ASTM Specification A671 - Steel Pipe (1977).
ASTM Specification A672 - Steel Pipe (1979).
[ASTM Specification A691 - Steel Pipe (1979).
ASTM B42 - Copper Pipe (1980).
ASTM B68 - Copper Tubing (1980).
ASTM B75 - Copper Tubing (1980).
ASTM B88 - Copper Tubing (1980).
ASTM B251 - Copper Pipe and Tubing (1976).]
ASTM D2513 - Thermoplastic Pipe and Tubing (1987 [1981]).
ASTM D2517 - Thermoplastic Plastic Pipe and Tubing (1973).
[ASTM A21.52 - Ductile Iron Pipe (1971).]

II. Steel pipe of unknown or unlisted specification.
A. Bending Properties. For pipe two (2) inches or less in diameter, a length of pipe shall [must] be cold bent through at least ninety (90) degrees around a cylindrical mandrel that has a diameter twelve (12) times the diameter of the pipe, without developing cracks at any portion and without opening the longitudinal weld.
[For] Pipe more than two (2) inches in diameter shall [, the pipe must] meet the requirements of the flattening test set forth in ASTM A53, except that the number of tests shall [must] be at least equal to the minimum required in paragraph II-D of this appendix to determine yield strength.
B. Weldability. A girth weld shall [must] be made in [the] pipe by a welder who is qualified under Subpart E of this part. The weld shall [must] be made under the most severe conditions under which welding will be allowed in the field and by [means of] the same procedure that will be used in the field. On pipe more than four (4) inches in diameter, at least one (1) test weld shall [must] be made for each 100 lengths of pipe. On pipe four (4) inches or less in diameter, at least one (1) test weld shall [must] be made for each 400 lengths of pipe. The weld shall [must] be tested in accordance with API Standard 1104. If requirements of API Standard 1104 cannot be met, weldability may be established by making chemical test for carbon and manganese, and proceeding in accordance with Section IX of the ASME Boiler and Pressure Vessel Code. The same number of chemical tests shall [must] be made as are required for testing a girth weld.
C. Inspection. [The] Pipe shall [must] be clean enough to permit adequate inspection. It shall [must] be visually inspected to ensure that it is reasonably round and straight and there are no defects which might impair [the] strength or tightness of the pipe.
D. Tensile Properties. If the pipe's tensile properties [of the pipe] are not known, [the] minimum yield strength may be taken as 24,000 psig or less, or [the] tensile properties may be established by performing tensile tests as set forth in API Standard 5LX. All test specimens shall be selected at random and the following number of tests must be performed:

NUMBER OF TENSILE TEST - ALL SIZES	
10 lengths or less	1 set of tests for each length.
11 lengths to 100 lengths	1 set of tests for each 5 lengths, but not less than 10 tests.
Over 100 lengths	1 set of tests for each 10 lengths, but not less than 10 tests.

If the yield-tensile ratio, based on [the] properties determined by those tests, exceeds 0.85, [the] pipe may be used only as provided in 192.55(c).

III. Steel pipe manufactured before November 12, 1970, to earlier editions of listed specifications. Steel pipe manufactured before November 12, 1970, in accordance with a specification of which a later edition is listed in Section I of this appendix, is qualified for use under this part if the following requirements are met:
A. Inspection. [The] Pipe shall [must] be clean enough for inspection [to be inspected] to ensure that it is reasonably round and straight and that there are no defects which might impair [the] strength or tightness of the pipe.
B. Similarity of specification requirements. The edition of the listed specification under which [the] pipe was manufactured shall [must] have substantially the same requirements with respect to the following properties as a later edition of that specification listed in Section I of this appendix:
(1) Physical (mechanical) properties of pipe, including yield and tensile strength, elongation, and

yield to tensile ratio, and testing requirements to verify those properties.

(2) Chemical properties of pipe and testing requirements to verify those properties.

C. Inspection or test of welded pipe. On pipe with welded seams, one (1) of the following requirements shall [must] be met:

(1) The edition of the listed specification to which the pipe was manufactured shall [must] have substantially the same requirements with respect to nondestructive inspection of welded seams and the standards for acceptance or rejection and repair as a later edition of the specification listed in Section I of this appendix.

(2) [The] Pipe shall [must] be tested in accordance with Subpart J of this part to at least 1.25 times [the] maximum allowable operating pressure if it is to be installed in a Class 1 location and to at least 1.5 times [the] maximum allowable operating pressure if it is to be installed in a Class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Subpart J of this part, [the] test pressure shall [must] be maintained for at least eight (8) hours.

APPENDIX C
QUALIFICATION OF WELDERS FOR
LOW STRESS LEVEL PIPE

I. Basic test. [The] Test shall be [is] made on pipe twelve (12) inches or less in diameter. The test weld shall [must] be made with [the] pipe in [a] horizontal fixed position so that [the] test weld includes at least one (1) section of overhead position welding. [The] Beveling, root opening, and other details shall [must] conform to the specification of the procedure under which the welder is being qualified. Upon completion, [the] test weld shall be [is] cut into four (4) coupons and subjected to a root bend test. If [as a result of this test,] two (2) or more of the four (4) coupons then develop a crack more than 1/8 inch long in any direction in the weld material, or between [the] weld material and base metal, [that is more than one-eighth (1/8) inch long in any direction,] the weld shall be [is] unacceptable. Cracks that occur on the specimen corner [of the specimen] during testing are not considered.

II. Additional tests for welders of service line connections to mains. A service line connection fitting shall be [is] welded to a pipe section with the same diameter as a typical main. The weld shall be [is] made in the same position as it is made in the field. The weld shall be [is] unacceptable if it shows a serious undercutting or if it has rolled edges. the weld shall be [is] tested by attempting to break the fitting off the run pipe. The weld shall be [is] unacceptable if it breaks and shows incomplete fusion, overlap, or poor penetration at [the] junction of the fitting and run pipe.

III. Periodic tests for welders of small service lines. Two (2) samples of the welder's work, each about eight (8) inches long with the weld [located] approximately centered, shall be [in the center, are] cut from steel service line and tested as follows:

(1) One (1) sample shall be [is] centered in a guilded bend testing machine and bent to the die contour [of the die] for [a distance of] two (2) inches on each side of the weld. If the sample shows any break or cracks after removal from the bending machine, it shall be [is] unacceptable.

(2) The ends of the second sample shall be [are] flattened and the entire joint subjected to a tensile strength test. If failure occurs adjacent to or in the weld metal, the weld shall be [is] unacceptable. If a tensile strength testing machine is not available, this sample shall [must] also pass the bending test prescribed in subparagraph (1) of this paragraph.

APPENDIX D
CRITERIA FOR CATHODIC PROTECTION
AND DETERMINATION OF MEASUREMENTS

I. Criteria for cathodic protection:

A. Steel, cast iron, and ductile iron structures.

(1) [A] Negative (cathodic) voltage of at least 0.85 volt, with reference to a saturated copper-copper sulfate half cell. Determination of this voltage shall [must] be made with the protective current applied, and in accordance with Sections II and IV of this appendix.

(2) [A] Negative (cathodic) voltage shift of at least 300 millivolts. Determination of this voltage shift shall [must] be made with the protective current applied, and in accordance with Sections II and IV of this appendix. This criterion of voltage shift applies to structures not in contact with metal of different anodic potentials.

(3) [A] Minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift shall [must] be determined in accordance with Sections III and IV of this appendix.

(4) [A] Voltage at least as negative (cathodic) as that originally established at the beginning of the Tafel segment of the E-log-I curve. This voltage shall [must] be measured in accordance with Section IV of this appendix.

(5) [A] Net protective current from the electrolyte into the structure surface as measured by an earth current technique applied at predetermined current discharge (anodic) points of the structure.

B. Aluminum structures.
(1) Except as provided in paragraphs (3) and (4) of this paragraph, a minimum negative (cathodic) voltage shift of 150 millivolts, produced by the application of protective current. The voltage shift shall [must] be determined in accordance with Sections II and IV of this appendix.
(2) Except as provided in paragraphs (3) and (4) of this paragraph, a minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift shall [must] be determined in accordance with Sections III and IV of this appendix.
(3) Notwithstanding the alternative minimum criteria in paragraphs (1) and (2) of this paragraph, aluminum, if cathodically protected at voltages in excess of 1.20 volts as measured with reference to a copper-copper sulfate half cell, in accordance with Section IV of this appendix, and compensated for the voltage (IR) drops other than those across the structure-electrolyte boundary may suffer corrosion resulting from the buildup of alkali on the metal surface. A voltage in excess of 1.20 volts shall [may] not be used unless previous test results indicate no appreciable corrosion will occur in the particular environment.
(4) Since aluminum may suffer from corrosion under high pH conditions, and since application of cathodic protection tends to increase the pH at the metal surface, careful investigation or testing shall [must] be made before applying cathodic protection to stop pitting attach on aluminum structures in environments with a natural pH in excess of eight (8).

C. Copper structures. [A] Minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift shall [must] be determined in accordance with Sections III and IV of this appendix.

D. Metal of different anodic potentials. [A] Negative (cathodic) voltage, measured in accordance with Section IV of this appendix, equal to that required for the most anodic metal in the system shall [must] be maintained. If amphoteric structures are involved that could be damaged by high alkalinity covered by paragraphs (3) and (4) of paragraph B of this section, they shall [must] be electrically isolated with insulating flanges, or their equivalent.

II. Interpretation of voltage measurement. Voltage (IR) drops other than those across the structure-electrolyte boundary shall [must] be considered for valid interpretation of the voltage measurement in paragraphs A(1) and (2) and paragraph B(1) of Section I of this appendix.

III. Determination of polarization voltage shift. [The] Polarization voltage shift shall [must] be determined by interrupting the protective current and measuring [the] polarization decay. When the current is initially interrupted, an immediate voltage shift occurs. The voltage reading after the immediate shift shall [must] be used as the base reading from which to measure polarization decay in paragraphs A(3), B(2), and C of Section I of this appendix.

IV. Reference half cells.
A. Except as provided in paragraphs B and C of this section, negative (cathodic) voltage shall [must] be measured between the structive surface and a saturated copper-copper sulfate half cell contacting the electrolyte.
B. Other standard reference half cells may be substituted for the saturated copper-copper sulfate half cell. Two (2) commonly used reference half cells are listed below along with their voltage equivalent to -0.85 volt as referred to a saturated copper-copper sulfate half cell:
(1) Saturated KCI calomel half cell: -0.78 volt.
(2) Silver-silver chloride half cell used in sea water: -0.80 volt.
C. In addition to the standard reference half cell, an alternate metallic material or structure may be used in place of the saturated copper-copper sulfate half cell if its potential stability is assured and if its voltage equivalent referred to a saturated copper-copper sulfate half cell is established.

GEORGE EDWARD OVERBEY, JR., Chairman
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 15, 1989 at noon
PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1990, at 10 a.m. at the Public Service Commission's office, Hearing Room No. 2, 677 Commanche Trail, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public

hearing or written comments on the proposed administrative regulation to: Claude G. Rhorer, Jr., Acting Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Claude G. Rhorer, Jr.

(1) Type and number of entities affected: This regulation prescribes minimum safety and service standards for the 66 natural gas utilities under the jurisdiction of the Public Service Commission of Kentucky. The total number of gas utilities required to comply with this regulation, as amended, will neither increase nor decrease.

(a) Direct and indirect costs or savings to those affected: In addition to substantial rewording to comply with KRS 13A.222, this regulation has been amended to reflect changes in federal law and regulations pertaining to pipeline safety and enforcement by the U.S. Department of Transportation, Office of Pipeline Safety. The changes made to comport with the federal law are technical in nature and are made pursuant to the Pipeline Safety Act of 1968, Section 5(a) Certification Agreement between the Kentucky Public Service Commission and the Office of Pipeline Safety.

1. First year: Changes made to comport with the federal mandate are clarifications of existing provisions with a few exceptions noted below. The clarifications do not result in any increased costs or savings the first year to the utilities regulated. Section 11(2)(d) has additional language which requires a utility to leak test pipeline joints at not less than the operating pressure for that pipeline. This requirement could result in increased costs to the utility for conducting leak tests at joints, but as a practical matter merely sets a minimum standard since it is now common in the industry to test these joints in the manner proposed.

Section 13(3)(f) requires a utility to include instructions for its personnel enabling them to identify safety related conditions which must be reported to the commission. Entities affected will expend additional labor to both develop the instructions and train personnel the first year.

Changes made by the agency at Section 8(2)(c) require the utility to seek approval of the agency prior to making charges to customers for gas meters. This requirement makes it mandatory that private arrangements mutually agreed upon between the utility and the customer will be effective only after commission approval and is made pursuant to KRS 278.160.

Changes at Section 8(3)(a)1, Section 8(5)(c), Section 8(17)(a)2, Section 13(17)(g), and Section 14(22)(c) all provide alternatives to the utility which should result in greater flexibility to the utility in operating a gas system. All of those changes with the exception of Section 8(3)(a)1 and Section 14(22)(c) may result in increased costs associated with filings necessary to obtain commission approval to implement the alternative, however, implementation of the alternative itself may result in savings to the utility since the least cost alternative could be selected.

2. Continuing costs or savings: First-year costs or savings to the utility will continue thereafter.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The amendments to this regulation will neither increase nor decrease competition, nor result in increasing or decreasing costs other than those noted above.

(b) Reporting and paperwork requirements: Paperwork requirements will increase only in those instances (identified above) where the utility selects an alternative which must be approved by the agency. Reporting requirements under Section 7(3) have been decreased since monthly construction progress reports will no longer be required. All other reporting requirements continue essentially unchanged.

(2) Effects on the promulgating administrative body: Since all utilities affected by this regulation are subject to the jurisdiction of this agency, the changes in this regulation will have little or no effect on the agency.

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings.

1. First year: There are no direct or indirect costs or savings the first year.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increase or decrease costs.

(b) Reporting and paperwork requirements: Reporting requirements of the agency will not change. Paperwork requirements may increase slightly due to utilities seeking agency approval for alternative methods; however, paperwork requirements will decrease since the requirements to file certain periodic reports has been eliminated. Other amendments to this regulation allow for the filings in lieu of other filings which has no net effect on paperwork for the agency.

(3) Assessment of anticipated effect on state and local revenues: The amendment of this regulation affects only private gas utilities and there is no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Changes made pursuant to changes in federal law are required by the federal government in order for the agency to keep its certification under Section 5(a) of the Pipeline Safety Act of 1968, so no alternatives could be considered. Changes made by the agency do, in most respects, reflect alternative methods which are acceptable to the agency and to the utilities.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The agency is unaware of any statute, administrative regulation or government policy which is in conflict, overlaps or duplicates any proposed amendment.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

(6) Any additional information or comments: The amendments proposed by the agency are, for the most part, changes which have been requested by the gas industry, over a period of time.

TIERING: Was tiering applied? No. Tiering was not possible since all gas systems are subject to this regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal statute and regulation constituting the federal mandate are 49 App. USC §1672, 1804 and 49 CFR, Part 192, Amendment Nos. 47 through 64, March 1984 through July 1989.
2. State compliance standards. This regulation proscribes minimum safety and service statutes for natural gas utilities operating under the jurisdiction of the Kentucky Public Service Commission.
3. Minimum or uniform standards contained in the federal mandate. The federal regulation proscribes minimum safety and service statutes for natural gas utilities.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation imposes neither stricter, additional, or different requirements than the federal. The federal regulation has been adopted with no changes.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

PUBLIC PROTECTION & REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:026. Gas service; gathering systems.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.485(3)
NECESSITY AND FUNCTION: KRS 278.485(1) provides that gas service shall be furnished at rates and charges as determined by the commission. KRS 278.485(3) requires that [the] installation and standards of safety for [the] installation of service lines may be prescribed by the commission. This regulation establishes [the] rules which apply to service from natural gas gathering pipeline systems.

Section 1. Definitions. For purposes of this regulation:
(1) "Commission" means [the] Public Service Commission.
(2) [(7)] "Customer meter" means the meter that measures the transfer of gas from [a] gas company to [a] consumer.
(3) "Customer piping" means [the] section(s) of [the] natural gas piping owned by the customer as established by Section 3 of this regulation.
(4) [(8)] "Gas company" means the owner of any producing gas well [and/]or gathering line.
(5) [(2)] "Gathering line" means any pipeline gathering gas from a producing gas well excluding pipelines on the discharge side of compressor stations.
(6) "Interior fuel gas piping" means the line from [the] point of entry into the building to [the] point or points of utilization.
(7) [(4)] "Service line" means a line that transports gas from a gathering line to:
(a) A customer meter or the connection to a customer's piping, whichever is farther downstream; or
(b) The connection to a customer's piping if there is no customer meter.
(8) [(5)] "Yard line" means a line that transports gas from:
(a) A customer meter or the connection to a customer's piping, whichever is farther downstream; or
(b) The connection to a customer's piping if there is no customer meter to [the] point of entry into the building.

Section 2. Construction Standards. Instances not covered by this regulation shall [must] meet, where applicable, the requirements of the "American National Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (ANSI B31.8)" 1982 [1975] edition as published by the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N. Y. 10017 herein incorporated by reference. Copies are available at the Commission office, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

Section 3. Requirements for Service. (1) Persons desiring gas service under KRS 278.485 shall file applications at the local gas company office. Applications [, which] shall contain the following information:
(a) Name and address of [the] applicant.
(b) Purpose for which gas is requested.
(c) Name and address of contractor installing service or yard line and other facilities required to be furnished by applicant.
(d) Name and address of gas company from which service is requested.
(2) Gas company shall furnish applicant with construction drawing showing installation and material meeting the company's specifications as approved by the commission for service installation.
(3) After receipt of the application, the gas company shall furnish a copy to the commission. [in Frankfort the name and address of the applicant and forward a copy of the application to the commission's representative in that area.]
(4) Applicant's gas service or yard line shall be inspected and approved by [the] commission staff [representative] before service is commenced. No service or yard line shall [will] be inspected for which an application has not been received.
(5) The commission shall [will] notify the applicant by mail if the service or yard line does not meet the requirements of its rules and regulations. If [the] defects are not corrected within the time permitted, the commission shall [will] notify the gas company and the application shall be discontinued by the company until the [such] defects are corrected.
(6) The gas company shall furnish, install and maintain the meter which shall remain its property.
(7) The service tap including saddle and first service shutoff valve shall be installed by the gas company and shall remain its property unless other provisions are made by tariff approved by the commission.
(8) All other approved equipment and material required for such service shall be furnished, installed and maintained by applicant at his expense and shall remain applicant's property.
(9) If leaks or other hazardous conditions are detected in the service or yard line, the gas company shall discontinue service until such leaks or other hazardous conditions are repaired or remedied by customer.

Section 4. Connections to High Pressure Gathering Lines. (1) Connections shall be [two (2) inches or less in diameter but] smaller than the diameter of the gathering line.

(2) Connections shall be on the upper one-half (1/2) of the pipe surface, preferably at an angle of forty-five (45) degrees.

(3) Connections shall be at right angles to the center line of the gathering line.

(4) A service shutoff shall immediately follow the connection to the gathering line.

(5) A drip tank shall be installed preceding [the] regulating equipment, but may be omitted upon approval of [the] commission staff [representative].

Section 5. Control and Limiting of Gas Pressure. (1) When maximum pressures may exceed sixty (60) p.s.i. a service regulator and a secondary regulator located upstream from the service regulator shall be installed. [The] Regulators shall be spring type, and the secondary regulator shall in no case be set to maintain [a] pressure higher than sixty (60) p.s.i. A spring type relief valve shall be installed to limit [the] pressure on the inlet of the service regulator to sixty (60) p.s.i. or less in case the secondary regulator fails to function properly.

(2) Every service line shall be equipped with an adequate spring type relief valve. The valve may be part of the final stage regulator.

(3) Regulators shall not be bypassed.

(4) Each relief valve shall be vented into [the] outside air.

(5) Vents shall be covered to prevent water and insects from entering.

(6) All metering and regulating equipment shall be as near to the gathering line as practicable, in accordance with safe and accepted operating practices.

(7) Regulating equipment shall be properly protected by the applicant.

Section 6. Service or Yard Lines and Metering Facilities. (1) The customer shall furnish and install the service or yard line from tap to point of utilization. The customer shall also secure all rights-of-way, railroad, highway and other crossing permits. The customer's service line shall be laid on undisturbed or well compacted soil in a separate trench avoiding all structures and hazardous locations. No structure shall be erected over the service or yard line.

(2) No branch tee or other connection shall be permitted on the line to serve any user other than the applicant [except] without [the] prior written consent of the gas company and the applicant, in which event [the] service to each user shall have an automatic shutoff valve with manual reset located on the riser in a horizontal position. Such shutoff valve shall have [an] operating pressure of eight (8) ounces with a shutoff pressure setting of not less than two (2) ounces.

(3) Service or yard lines shall be constructed [so as] to avoid subsurface structures but in no case shall service lines be constructed within a distance of less than thirty-six (36) inches from any subsurface structure [or parallel thereto closer than thirty-six (36) inches].

(4) Service or yard lines shall be leak checked by the gas company prior to being placed into service. If feasible the service line connection to main shall [must] be included in the test; if not feasible, it shall [must] be given a leakage test at the operating pressure when placed into service. Service or yard lines shall be tested by the company with [must be given a leak test at a pressure of at least 150 percent of the maximum operating pressure or fifty (50) p.s.i. whichever is greater using natural gas, inert gas, or] air, or inert gas to fifty (50) psig for at least [as the test medium. The test pressure shall be maintained for] thirty (30) minutes [after stabilizing].

(5) Service or yard lines shall be purged after testing to remove any air accumulations.

(6) Metering pressure shall not exceed eight (8) ounces per square inch or .5 psig, or as otherwise approved by the commission.

(7) Steel service or yard lines shall be constructed of new plant coated black steel pipe with all joints and fittings coated [and/]or taped in accordance with manufacturer's recommendations [approved procedures] from the gas meter to the outlet side of the stopcock located on the riser entering into the building and shall be of a size not less than one and one-fourth (1 1/4) inches. Steel service or yard lines shall be cathodically protected pursuant to 807 KAR 5:022, Section 10.

(a) When the service line passes through cultivated land the trench shall be of sufficient depth to permit [a] backfill cover of twenty-four (24) inches above the service line.

(b) Where [a] twenty-four (24) inch cover is not practical, [the] trench depth shall be sufficient to permit [a] minimum cover of eighteen (18) inches.

(8) Each steel service or yard line shall have two (2) insulating joints, one (1) of which shall follow the regulating units, the other shall separate the yard line from [the] interior fuel gas piping.

(9) Plastic service or yard lines shall be constructed of plastic pipe qualified for gas use in accordance with American Society for Testing and Material standards. Plastic service lines shall only be installed with at least twelve (12) inches of cover in private property and at least eighteen (18) inches of cover in streets and roads. When passing through cultivated land the plastic service line shall be installed with at least twenty-four (24) inches of cover. Plastic service lines shall be buried with an electrically conductive wire capable of locating the plastic line. [below ground in a trench of sufficient depth to permit a backfill cover of thirty-six (36) inches above the service line. Plastic service or yard lines shall have an electrically conductive wire or other means of locating the pipe while it is underground.] All joints in plastic service lines shall be made by persons qualified in accordance with the provisions of 49 CFR Part 192.285. No exposed plastic shall be installed above ground.

(10) Yard lines shall enter the building above [the] ground level with a shutoff valve located on the riser.

(11) Service to each customer shall have an automatic cutoff valve with manual reset to shut off gas if gas pressure fails. The valve may be part of the final stage regulator. Such a valve shall have [an] operating pressure of eight (8) ounces with [a] shutoff pressure setting of not less than two (2) ounces.

Section 7. Payment of Bills or Other Default.

(1) The customer shall pay the installation charge and thereafter pay the gas company for all gas delivered at rates approved [determined therefor] by the commission. The gas company shall render statements to the customer at regular monthly or bimonthly intervals for gas delivered. These [, which said] statements shall be rendered not later than ten (10) days following each billing period. No gas company shall discontinue service to any customer for nonpayment of bills (including delayed payment charges) without first having made a reasonable effort to induce the customer to pay the bill [same]. The customer shall be given at least forty-eight (48) hours written notice, but [the] cutoff shall not be effected before fifteen (15) days after the mailing date of the original bill. Service shall not be reestablished until the customer has paid the gas company all amounts due for gas delivered plus a turn-on charge of twenty-five (25) dollars, and placed himself in full compliance with commission [the] regulations [of the commission] pertaining to such service. If [In the event] the customer fails or refuses to pay such unpaid bill(s) and turn-on charge [and/]or to comply [places himself in compliance] with commission [the] regulations [of the commission] within thirty (30) days from the date the gas is turned off, the gas company may disconnect customer's service line from its gathering line. [and] Service shall not be reestablished until the customer has complied with commission [the] regulations [of the commission] pertaining to initial service.

(2) The gas company may [shall have the right, if it so elects, to] require a cash deposit or other guaranty from the customer to secure payments of bills.

Section 8. General Provisions. The gas company shall at all times have access to [the] premises where the connection is made and the meter is located, and may [with the right to] shut off [the] gas and remove its property from said premises upon reasonable notice for any of the following reasons: [for] repairs or because of leakage; [for] nonpayment of any bills; [for] failure to make a cash deposit, if [such be] required; [for] any violation of this regulation; moving of the customer from [the] premises; [for] fraudulent tampering with the meter, regulators or connections; [for] shortage of gas or reasons of safety; [for] larceny of gas; [for] any action by a customer to secure through his meter gas for purposes other than those requested, or for any other party without [the] written consent of the gas company; or [for] false representation with respect to [the] ownership of property to which service is furnished.

Section 9. Rates and Charges. (1) Each gas company may [make and collect an initial] charge [of] $150 for each service tap, including saddle and first shutoff valve which, under this regulation, are required to be furnished and installed by the gas company. No part of this charge shall be refunded by the gas company.

(2) Each gas company shall [may] charge, for gas used, tariff rates which have been [filed and] approved by the commission, or if none, [the] current Federal Energy Regulatory Commission approved rate.

(3) [The] Provisions contained in this regulation [herein] shall apply only to connections and services made pursuant to [the provisions of] KRS 278.485 and subsequent to the effective date of this regulation.

Section 10. Deviation from Rules. In special cases for good cause shown [upon application to and approval by,] the commission may permit deviations from these rules.

GEORGE EDWARD OVERBEY, JR., Chairman
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 15, 1989 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 10 a.m. at the Public Service Commission's office, Hearing Room No. 2, 677 Commanche Trail, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Claude G. Rhorer, Jr., Acting Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Claude G. Rhorer, Jr.

(1) Type and number of entities affected: This regulation affects up to 175 gas producers and utilities who provide service to customers pursuant to KRS 278.485 (farm taps).

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings associated with these revisions. Most changes are for clarification and to comply with new promulgation language rules.

1. First year: Changes in Section 6(6) could result in savings to the regulated entity since flexibility is allowed in determining maximum metering pressure. Changes in Section 6(9) result in a less restrictive requirement regarding the depth of service or yard lines and may result in savings to affected entities when these lines are replaced or lines for new customers installed.

2. Continuing costs or savings: If savings were realized the first year then those savings will continue thereafter.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs and there are no effects on competition.

(b) Reporting and paperwork requirements: There are no additional reporting requirements as a result of these changes.

(2) Effects on the promulgating administrative body: There are no additional requirements for

the agency. Language changes are for clarification, consistency, and compliance with new promulgation requirements.

(a) Direct and indirect costs or savings: There is no fiscal impact on the agency.

1. First year: There is no fiscal impact the first year.

2. Continuing costs or savings: There is no continuing fiscal impact.

3. Additional factors increasing or decreasing costs: There are none.

(b) Reporting and paperwork requirements: There are no additional reporting requirements for the agency. Language changes are for clarification, consistency, and compliance with new promulgation requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no fiscal impact on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Inasmuch as changes are for clarification and consistency, alternatives are unnecessary.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These changes do not conflict with current laws, regulations or policy.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

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

TIERING: Was tiering applied? No. These are not substantive changes, therefore, tiering was not considered. Majority of changes are editorial and to comply with new promulgation rules.

PUBLIC PROTECTION & REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:027. Gas pipeline safety; reports of leaks.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040(3), 278.230(3)

NECESSITY AND FUNCTION: KRS 278.040(3) provides that the commission may adopt reasonable regulations to implement the provisions of KRS Chapter 278 and to investigate [the] methods and practices of [the] utilities subject to [the] commission['s] jurisdiction. KRS 278.230(3) provides that [the] utilities shall file any reports reasonably required by the commission. This regulation establishes [the] rules which apply to reports of leaks by natural gas utilities.

Section 1. Definitions. (1) "Incident" means a gas leak, accident, or other event on a pipeline which requires the utility to notify United States Department of Transportation (USDOT) or the commission. ["Commission" for purposes of this regulation means the Public Service Commission.]

[(2) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive.]

[(3) "Municipality" means a city, county, or any other political subdivision of a state.]

[(4) "Person" means any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.]

(2) [(5)] "Pipeline facilities" includes, without limitation, new and existing pipe, right-of-way, and any equipment, facility, or building used in [the] transportation of gas or [the] treatment of gas during the course of transportation.

(3) [(6)] "System" means all pipeline facilities used by a utility [particular operator] in [the] transportation of gas, including but not limited to, line pipe, valves and other appurtenances connected to line pipe, compressor units, fabricated assemblies associated with compressor units, metering (including customers' meters) and delivery stations, and fabricated assemblies in metering and delivery stations.

(4) [(7)] "Test failure" means a break or rupture that occurs during strength-proof testing of transmission or gathering lines that is of such magnitude as to require repair before continuation of the test.

(5) [(8)] "Transportation of gas" means the gathering, transmission, or distribution of gas by pipeline, or [the] storage of gas in or effecting interstate, intrastate or foreign commerce.

Section 2. Scope. (1) This regulation prescribes requirements for [the] reporting [of] gas leaks that are not intended by the utility and that require immediate or scheduled repair and of test failures as defined in Section 1(4) of this regulation. [by persons engaged in the transportation of gas.]

(2) This regulation applies to leaks and test failures that occur in the gathering of gas located in the following areas:

(a) An area within the limits of any incorporated or unincorporated city, town, or village; or

(b) Any designated residential or commercial area such as a subdivision, business or shopping center, or community development.

(c) The right-of-way of a state highway, county road or railroad on [the] property of a school, church, hospital, park or similar public place.

[(3) The reporting requirements in this regulation are intended to require a report to the commission in case of an accident involving a gas leak on a facility covered by this regulation.]

Section 3. Telephonic Notice of Certain Incidents Required by 49 CFR Part 191, Federal Pipeline Safety Regulations. [Leaks.] (1) At the earliest practicable moment following discovery, each utility shall give notice to USDOT in accordance with subsection (2) [(3)] of this section of [any leak that]:

(a) An event that involves release of gas from a pipeline and:

1. [Caused a] Death or [a] personal injury necessitating inpatient [requiring] hospitalization; or [.]

2. Estimated property damage, including cost of gas lost, of the operator or others, or both, of $50,000 or more.

(b) An event that is significant, in the

judgment of the operator, even though it does not meet the criteria of subsection (1)(a) of this section.

(2) Each notice required by subsection (1) of this section shall be made by telephone to 1-800-424-8802 and shall include the following information:

(a) Names of operator and person making report and their telephone numbers.

(b) Location of the incident.

(c) Time of the incident.

(d) Number of fatalities, and personal injuries, if any.

(e) All other significant facts that are known by the operator that are relevant to the cause of the incident or extent of damage.

[(b) Required the taking of any segment of transmission pipeline out of service.]

[(c) Resulted in gas igniting.]

[(d) Caused estimated damage to the property of the utility, or others, or both, of a total of $5,000 or more.]

[(e) In the judgment of the utility, was significant even though it did not meet the criteria of paragraphs (a), (b), (c) or (d) of this subsection.]

[(2) A utility need not give notice of a leak that met only the criteria of subsection (1)(b) or (c) of this section, if it occurred solely as a result of, or in connection with, planned or routine maintenance or construction.]

[(3) Each notice required by subsection (1) of this section shall be made by toll-free telephone to Area Code (800) 424-8802 and shall include the following information:]

[(a) The location of the leak.]

[(b) The time of the leak.]

[(c) The fatalities and personal injuries, if any.]

[(d) All other significant facts that are known by the operator that are relevant to the cause of the leak or extent of the damages.]

Section 4. Telephonic Notice of Certain Incidents. (1) In addition to the reporting requirements in Section 3 of this regulation, at the earliest practicable moment but no later than two (2) hours following discovery, each utility shall give notice to the commission in accordance with subsection (3) of this section of any incident that [a report shall be made by telephone to the chief engineer, gas section of the commission staff of any accident to, or relating to, a facility or operation covered by these regulations which]:

(a) Is reported to USDOT pursuant to 49 CFR Part 191, Federal Pipeline Safety Regulations, [in accordance with] Section 3 of this regulation.

(b) Requires taking any segment of pipeline or mains out of service. [Causes property damage of $5,000 or more.]

(c) Results in gas ignition.

(d) Causes estimated damage to property of the utility, or others, or both, of $25,000 or more.

(e) [(c)] Results in the loss of service to forty (40) or more customers for four (4) or more hours.

(f) [(d)] Causes the loss of a sizable amount of gas.

(g) [(e)] Received extensive news coverage, or in the judgment of the utility is significant, even though it does [did] not meet the criteria of paragraphs (a) through (g) [, (b), (c) or (d)] of this subsection.

(2) A utility need not give notice of an incident that meets only criteria of subsections (1)(b) and (c) of this section if it occurred solely as a result of, or in connection with, planned or routine maintenance or construction.

(3) Each notice required by subsection (1) of this section shall be made by telephone to the commission's chief engineer, gas pipeline safety branch, or designated staff; and shall include the following numbers:

(a) Names of operator and person making report and their telephone numbers.

(b) Location of incident.

(c) Time of incident.

(d) Number of fatalities.

(e) All other significant facts known by the operator that are relevant to the cause of the incident or extent of damage.

(4) If designated staff cannot be contacted, required information shall be reported by telephone to the neareast post of Kentucky State Police, followed by a confirming telegram addressed to the commission.

(5) Each notice made in accordance with this section shall be supplemented by a written report within thirty (30) days giving full details such as cause; extent of injuries or damage; and steps, if any, taken to prevent reoccurrence. If additional information is received by the utility subsequent to the initial report indicating a different cause, more serious injury, or more serious property damage than was initially reported, a supplemental telephone call shall be made to the commission's chief engineer, gas pipeline safety branch, as soon as practicable.

[(2) If the chief engineer, gas section of the commission, or his delegate cannot be contacted the required information shall be reported by telephone to the nearest post of the Kentucky State Police, followed by a confirming telegram addressed to the commission office.]

[(3) Accident reports made in accordance with this section shall be supplemented, within a reasonable time, by a final written report giving full details such as cause, extent of injuries or damage and steps, if any, taken to prevent reoccurrence.]

[(a) Exceptions to this subsection will be allowed only if the chief engineer, gas section of the commission, advises the utility that such a written report is not necessary.]

[(b) If additional information is received by the utility subsequent to the initial report indicating a different cause, more serious injury or more serious property damage than was initially reported, a supplemental telephone report shall be made to the commission staff as soon as practicable.]

Section 5. Addressee for Written Report. (1) Each written report required by this regulation shall be transmitted to the Gas Pipeline Safety Branch, [made in duplicate. One (1) copy shall be transmitted to the Chief Engineer, Gas Section,] Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602.

(2) Each written report required by Sections 3 and 12 of this regulation shall be transmitted to the Gas Pipeline Safety Branch, Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; and one (1) copy shall be transmitted to the Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. [Information

Systems Manager, Materials Transportation Bureau,] Department of Transportation, Room 8417, 400 Seventh Street, SW, Washington, D.C. 20590.

Section 6. Distribution System: Incident Report. (1) Except as provided in subsection (3) of this section, each utility shall submit USDOT Form RSPA F7100.1 as soon as practicable but not more than thirty (30) days after detection of an incident required to be reported in accordance with Section 3 of this regulation. [Leak Report. (1) As soon as practicable but not more than twenty (20) days after detection, a utility shall report, to the commission, the following on Department of Transportation Form DOT-F-7100.1:]

[(a) A leak that required notice by telephone pursuant to Sections 3 or 4 of this regulation.]

[(b) A leak that, because of its location, required immediate repair and other emergency action to protect the public such as evacuation of a building, blocking off an area, or rerouting of traffic.]

(2) When additional relevant [related] information is obtained after the [a] report is submitted under subsection (1) of this section, the utility shall make a supplementary report as soon as practicable with a clear reference by date and subject to the original report.

(3) The incident report required by this section shall not be submitted with respect to master meter systems. [Each utility serving more than 100,000 customers shall also report to the Office of Pipeline Safety any leak which meets the requirements of subsection (1) of this section.]

Section 7. Distribution System: Annual Report. (1) A utility shall submit an annual report on USDOT [Department of Transportation] Form DOT F-7100.1-1. This report shall [must] be submitted not later than March [February] 15 for the preceding calendar year. A copy of this report shall be filed with the commission.

(2) The annual report required by subsection (1) of this section need not be submitted with respect to petroleum gas systems which serve less than 100 customers from a single source.

Section 8. Distribution Systems Reporting [: Certain Facilities Reported as a] Transmission Pipelines; Transmission or Gathering Systems Reporting Distribution Pipelines. Each [A] utility primarily engaged in gas distribution which also operates gas transmission or gathering pipelines shall submit separate reports for these pipelines in accordance with [shall, for pipeline facilities that operate at twenty (20) percent or more of specified minimum yield strength, or that used to convey gas into or out of storage, submit reports for those facilities under] Sections 9 and 10 of this regulation. Each utility primarily engaged in gas transmission or gathering which also operates gas distribution pipelines shall submit separate reports for these pipelines in accordance with Sections 6 and 7 of this regulation.

Section 9. Transmission and Gathering Systems: Incident [Leak] Report. (1) A utility shall submit USDOT Form RSPA F7100.2 [,] as soon as practicable but not more than thirty (30) [twenty (20)] days after detection of an incident required to be reported under Section 3 of this regulation. [, report the following on Department of Transportation Form DOT-F-7100.2:]

[(a) A leak that required notice by telephone under Sections 3 or 4 of this regulation.]

[(b) Leak in a transmission line that required immediate repair.]

[(c) A test failure that occurred while testing either with gas or another test medium.]

(2) When additional relevant [related] information is obtained after a report is submitted in accordance with [under] subsection (1) of this section, the utility [operator] shall make a supplemental report as soon as practicable with [a] clear reference by date and subject to the original report.

Section 10. Transmission and Gathering Systems: Annual Report. A utility shall submit an annual report on USDOT [Department of Transportation] Form DOT-F-7100.2-1. This report shall [must] be submitted for the preceding calendar year not later than March [February] 15. A copy of this report shall be filed with the commission.

Section 11. Report Forms. Copies of [the] prescribed report forms are available without charge upon request from the USDOT Office of Pipeline Safety or from the commission. Additional copies in this prescribed format may be reproduced and used if of [in the] same size and kind of paper.

Section 12. Reporting Safety-Related Conditions. (1) Except as provided in subsection (2) of this section, each utility shall report in accordance with Section 13 of this regulation the existence of any of the following safety-related conditions involving facilities in service:

(a) In the case of a pipeline that operates at a hoop stress of twenty (20) percent or more of its specified minimum yield strength, general corrosion that has reduced wall thickness to less than that required for the maximum allowable operating pressure, and localized corrosion pitting to a degree where leakage might result.

(b) Unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability of a pipeline.

(c) Any material defect or physical damage that impairs serviceability of a pipeline that operates at a hoop stress of twenty (20) percent or more of its specified minimum yield strength.

(d) Any malfunction or operating error that causes the pressure of a pipeline to rise above its maximum allowable operating pressure plus the build-up allowed for operation of pressure limiting or control devices.

(e) A leak in a pipeline that constitutes an emergency.

(f) Any safety-related condition that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a twenty (20) percent or more reduction in operating pressure or shutdown of operation of a pipeline.

(2) A report is not required for any safety-related condition that:

(a) Exists on a master meter system or a customer-owned service line;

(b) Is an incident or results in an incident before the deadline for filing the safety-related condition report;

(c) Exists on a pipeline that is more than 220 yards from any building intended for human occupancy or outdoor place of assembly, except that reports are required for conditions within the right-of-way of an active railroad, paved road, street, or highway; or

(d) Is corrected by repair or replacement in accordancae with applicable safety standards pursuant to 807 KAR 5:022 before the deadline for filing the safety-related condition report, except that reports are required for conditions under subsection (1)(a) of this section other than localized corrosion pitting on an effectively coated and cathodically protected pipeline.

Section 13. Filing Safety-related Condition Reports. (1) Each report of a safety-related condition under Section 12 of this regulation shall be filed (received by the commission) in writing within five (5) working days (not including Saturday, Sunday, or federal holidays) after the day a representative of the utility first determines that the condition exists, but not later than ten (10) working days after the day a representative of the utility discovers the condition. Separate conditions may be described in a single report if they are closely related. To file a report by telefacsimile (fax) dial 502-564-7279.

(2) The report shall be headed "Safety-related Condition Report" and provide the following information:

(a) Name and principal address of utility.

(b) Date of report.

(c) Name, job title, and business telephone number of person submitting the report.

(d) Name, job title, and business telephone number of person who determined that the condition exists.

(e) Date condition was discovered and date condition was first determined to exist.

(f) Location of condition, with reference to the town, city or county, and as appropriate nearest street address, survey station number, milepost, landmark, or name of pipeline.

(g) Description of the condition, including circumstances leading to its discovery, any significant effects of the condition on safety, and name of commodity transported or stored.

(h) Corrective action taken (including reduction of pressure or shutdown) before the report is submitted and the planned follow-up future corrective action, including anticipated schedule for starting and concluding such action.

GEORGE EDWARD OVERBEY, JR., Chairman
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: December 14, 1989

FILED WITH LRC: December 15, 1989 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 10 a.m. at the Public Service Commission's office, Hearing Room No. 2, 677 Commanche Trail, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Claude G. Rhorer, Jr., Acting Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Claude G. Rhorer, Jr.

(1) Type and number of entities affected: This regulation affects 66 gas utilities under the jurisdiction of the agency.

(a) Direct and indirect costs or savings to those affected: This regulation addresses procedures and reporting requirements for leaks and accidents. Most changes are pursuant to recent revisions in federal DOT requirements. The PSC is the state agency responsible for enforcement of pipeline safety and pursuant to the Pipeline Safety Act of 1968, Section 5(a) Certification Agreement must comply with federal standards. Although some minor characteristics of reporting requirements are changed, there is no discernible fiscal impact from these changes because they are not daily operational requirements.

1. First year: There is no fiscal impact.

2. Continuing costs or savings: There is no fiscal impact.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no factors which impact costs, nor are there any effects on competition.

(b) Reporting and paperwork requirements: Reporting requirements will be less restrictive because the qualification for reporting leaks or incidents increases from $5,000 to $25,000 in damage for agency reports (Section 4) and from $5,000 to $50,000 for federal reports (Section 3). Section 4: Amendment specifies a time frame of two hours for reporting to the agency. Such timely reporting will guarantee adequate monitoring. Sections 5-13: Changes made to comply with federal DOT requirements.

(2) Effects on the promulgating administrative body: There will be negligible effect on the agency because these changes do not affect daily operation. They are regulations for emergency situations, and as such, impact the Gas Pipeline Safety Branch only.

(a) Direct and indirect costs or savings: There are no direct and indirect costs or savings to the PSC.

1. First year: There is no fiscal impact.

2. Continuing costs or savings: There is no fiscal impact.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Changes do not affect agency procedure in responding to notification.

(3) Assessment of anticipated effect on state and local revenues: There is no fiscal impact on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Inasmuch as these changes are pursuant to revised federal

DOT requirements, alternatives were not applicable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These changes are not in conflict with any current statutes or regulations.

(a) Necessity of proposed regulation if in conflict: No conflict.

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

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

TIERING: Was tiering applied? No. This is not a new regulation. Inasmuch as most changes are pursuant to federal DOT requirements, tiering is not applicable.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal statute and regulation constituting the federal mandate are 49 App. USC §1672, 1804 and 49 CFR, Part 191, Amendment Nos. 47 through 64, March 1984 through July 1989.

2. State compliance standards. This regulation establishes requirements which apply to the reporting of leaks for natural gas utilities operating under the jurisdiction of the Kentucky Public Service Commission.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation proscribes minimum safety and service statutes for natural gas utilities.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation imposes neither stricter, additional, or different requirements than the federal. The federal regulation has been adopted with no changes.

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

PUBLIC PROTECTION & REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:031. Gas well determinations.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.010(4)(b), 278.040(3), 278.110

NECESSITY AND FUNCTION: KRS 278.010(4)(b) and 278.040 subject the production of natural or manufactured gas, or a mixture of the two (2) [same], to or for the public for compensation, for heat or other uses, to [the] jurisdiction and regulation of the Public Service Commission. The federal Natural Gas Policy Act of 1978, [became] effective [on] December 1, 1978. [. This Act] sets forth and defines certain classifications of natural gas to which are assigned maximum lawful prices that may be obtained by gas producers. The Act further provides that the appropriate state regulatory [it shall be the duty of each state] agency shall [possessed of appropriate regulatory jurisdiction to] make determinations as to the applicability of [the] statutorily defined classifications to particular gas wells within that state. These [Such] determinations shall [are to] be forwarded to the Federal Energy Regulatory Commission for final determination.

[KRS 278.110 empowers the Public Service Commission to contract for services of persons in a professional or scientific capacity to perform the duties and exercise the powers conferred by law on the commission. The commission has contracted with the Department of Mines and Minerals for the purpose of securing the assistance of that department's Division of Oil and Gas Conservation in collecting and analyzing data necessary for the making of the determinations described hereinabove.

It is the purpose of this regulation to set forth the manner whereby the Public Service Commission will discharge the duties conferred upon it by the Natural Gas Policy Act of 1978.]

Section 1. Definitions. "FERC" means the Federal Energy Regulatory Commission. [For purposes of this regulation: "Commission" means the Public Service Commission.]

Section 2. Applications for Determinations. (1) Any owner or operator of a well producing [productive of] natural gas within this state may obtain a determination as to whether such well qualifies for one or more of the classifications set forth in sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978 by making application to the Public Service Commission, 730 Schenkel Lane, Post Office Box 615, Frankfort, Kentucky 40602 [Department of Mines and Minerals, Division of Oil and Gas Conservation, Post Office Box 680, Lexington, Kentucky 40586].

(2) Each application shall be on forms prescribed by the commission, filed in duplicate and include the following [items]:

(a) A completed Federal Energy Regulatory Commission (FERC) Form Number 121;

(b) All information, records, documents, notices and affirmations required by 18 Code of Federal Regulations (CFR) Part 274, subpart B;

(c) Any other information, record, document, or affirmation necessary to substantiate and support the determination sought;

(d) Nonrefundable cash, a [certified] check or a United States Postal Money Order in the amount of fifty (50) dollars made payable to the Treasurer, Commonwealth of Kentucky [Department of Mines and Minerals].

(3) [Each] Application [shall be submitted on] forms shall be available upon request to the commission. [Department of Mines and Minerals, Division of Oil and Gas Conservation, Post Office Box 680, Lexington, Kentucky 40586.]

Section 3. General Requirements. (1) An applicant shall not be limited to one (1) determination per well, but may obtain all determinations to which a given well is entitled pursuant to the Natural Gas Policy Act of 1978.

(2) A separate application shall [must] be completed for each determination sought.

(3) If [the person filing] an application is filed by an individual, the application [filing] shall be signed by that person [such individual], or in the case of a minor or other legally disabled person, his qualified legal representative. If the application is filed by [person making the filing is] a corporation, partnership or trust, the application [filing] shall be signed by a responsible official or

legal representative of the corporation, a general partner of the partnership or the trustee of the trust. When application is made by [In the case of] any other legal entity, the operator of the well may sign the application.

(4) An operator under a joint operating agreement may sign an application for a well covered by the operating agreement if notice of [the] application is given by the operator to all other parties to the joint operation agreement and that fact is certified in the application.

(5) Where an application for a determination is sought for natural gas for which the applicant has an identified purchaser, the application shall include a statement that the applicant has delivered or mailed a copy of [the] completed FERC Form No. 121 to the purchaser.

(6) The applicant may request confidentiality of any information, record or document submitted by the [an] applicant pursuant to 807 KAR 5:001, Section 7 [shall be governed by KRS 61.870 to 61.884].

Section 4. Processing of Applications. (1) Upon receipt of each application submitted in accordance with this regulation, the commission [Department of Mines and Minerals] will date-stamp the application and analyze the data submitted to determine whether [the] applicant is entitled to the determination sought pursuant to the Natural Gas Policy Act of 1978 and 18 CFR Parts 271 and 274, subpart B.

(2) Based upon its review of the application, the commission [Department of Mines and Minerals] will make an initial written [a recommended] determination if the application is acceptable as prescribed in 18 CFR Parts 271 and 274, subpart B. The commission shall publish notice of the initial determination [and forward the application and recommended determination to the commission.]

[(3) Upon receipt of an application and recommended determination, the commission shall cause to be made public notice of the recommended order of the Department of Mines and Minerals by publication] in the legal notice section of a newspaper of statewide circulation.

(3) [(4)] Any interested person may request a hearing on any application or initial determination by written notification to the commission specifically stating the grounds for such request. The request shall be made within ten (10) working days of the public notice.

(4) Upon receipt of a written [(5) If the] request for [a] hearing, [is received by] the commission shall schedule a public [within ten (10) days of the publication of the recommended determination and the] hearing pursuant to [request states grounds which, if proven, would support a reversal or remand of the recommended determination, then the commission will schedule and conduct a hearing in accordance with the procedures set forth in] 807 KAR 5:001, Section 4[(1), (2), (3), (4) and (5)].

(5) [(6)] On the basis of [the substantial] evidence presented [adduced] at this [the] hearing, or if no hearing is requested as prescribed, the commission shall issue a final order affirming or reversing the initial [recommended] determination [of the Department of Mines and Minerals].

[(7) If no hearing is requested within ten (10) days of the public notice of the recommended order, the commission shall issue a final order affirming the recommended determination unless upon review of the application it finds that:]

[(a) The recommended determination is not supported by substantial evidence in the record upon which it was made; or]

[(b) The recommended determination is not consistent with information contained in the public record upon which it was made.]

(6) [(8) The] Provisions of subsection (5) [s (6) and (7)] of this section notwithstanding, the commission may at [remand] any time prior to issuing the final order reevaluate any application or initial determination if the commission discovers additional pertinent [to the Department of Mines and Minerals for further consideration if as a result of evidence received at a hearing or upon its own review, it finds the existence of material] information beyond the scope [not made a part] of the original application [record which would be outcome determinative].

(7) [(9)] Within fifteen (15) days after issuing a final order pursuant to this regulation, the commission shall forward the order and the entire record upon which it was made to the Federal Energy Regulatory Commission in the manner prescribed by 18 CFR 274.104.

GEORGE EDWARD OVERBEY, JR., Chairman
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 15, 1989 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 10 a.m. at the Public Service Commission's office, Hearing Room No. 2, 677 Commanche Trail, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Claude G. Rhorer, Jr., Acting Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Claude G. Rhorer, Jr.

(1) Type and number of entities affected: This regulation affects the 350 gas producers who seek well determinations from the Federal Energy Regulatory Commission.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings to gas producers. Changes are for clarification, consistency with other regulations, or compliance with new promulgation rules.

1. First year: There is no direct or indirect cost or savings.

2. Continuing costs or savings: There is no direct or indirect cost or savings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs and no effect on competition.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(2) Effects on the promulgating administrative body: Changes are for clarification, consistency, and compliance with new promulgation rules.
(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency.
1. First year: There is no direct or indirect cost or savings.
2. Continuing costs or savings: There is no direct or indirect cost or savings.
3. Additional factors increasing or decreasing costs: There are no additional factors.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There will be no fiscal impact on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Changes are for clarification and consistency, therefore alternatives are inapplicable.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These changes are not in conflict with other statutes, regulations, or policies.
(a) Necessity of proposed regulation if in conflict: No conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.
(6) Any additional information or comments: No additional comments.
TIERING: Was tiering applied? No. This is not a new regulation. Changes are for clarification and consistency with other regulations.

PUBLIC PROTECTION & REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:041. Electric.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by the utility. This regulation establishes general rules which apply to electric utilities.

[Section 1. Definitions. For purposes of this regulation: "Commission" means the Public Service Commission.]

Section 1. [2.] General Requirements. Every utility shall furnish adequate service and facilities at [the] rates filed with the commission, and in accordance with [the] regulations of the commission and applicable [the] rules of the utility [applicable thereto]. [The] Energy shall be generated, transmitted, converted and distributed by the utility, and utilized, whether by the utility or the customer, in such manner as to obviate undesirable effects upon the operation of standard services or equipment on the utility, its customers and other utilities.

Section 2. [3.] Acceptable Standards. A utility shall construct and maintain its plant and facilities in accordance with good accepted engineering practices. Unless otherwise specified by the commission, the utility shall use [the] applicable provisions in the following publications as standards of accepted good engineering practice for [the] construction and maintenance of plant and facilities, herein incorporated by reference:
(1) National Electrical Safety Code; ANSI C-2. 1987 [1981] Edition, available by contacting the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02169;
(2) National Electrical Code; ANSI-NFPA 70. 1987 [1981] Edition, available by contacting the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02169;
(3) American National Standard Code for Electricity Metering; ANSI C-12.1. 1982 [1975] Edition, available by contacting the Institute of Electrical and Electronics Engineers, Inc., 345 E. 47th Street, New York, New York 10017;
(4) USA Standard Requirements, for Instrument Transformers; ANSI Standard [USAS] C57.13, 1978 [1968] Edition, available by contacting the Institute of Electrical and Electronics Engineers, Inc., 345 E. 47th Street, New York, New York 10017.
(5) It is the intent of this regulation that the adoption and applicability of the National Electrical Code as a standard of utility practice is limited to all utility installations and facilities other than those specifically excluded by the National Electrical Code.
(6) All materials incorporated by reference above are available for public inspection and copying at the Public Service Commission of Kentucky, 730 Schenkel Lane, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m.

Section 3. [4.] Generating Station Meter Records. Every utility shall install such watt-hour meters as [may be] necessary to obtain a record of [the] output of its generating station or stations. Every utility purchasing electrical energy shall install such meters as [may be] necessary to furnish a proper record of its purchases, unless such [instrument or] instruments are installed by the selling company.

Section 4. [5.] Maintenance or Continuity of Service. (1) Each utility shall make all reasonable efforts to prevent interruptions of service, and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay. Whenever [the] service is necessarily interrupted or curtailed for the purpose of working on equipment, it shall be done at a time[, which] if [at all] practicable, that will cause [the] least inconvenience to customers, and those customers which may be seriously affected shall be notified in advance, except in cases of emergency.
(2) Each utility shall keep a record of: [the] time of starting and shutting down the principal units of its power station equipment and feeders for major divisions; [the] indications of

sufficient switchboard instruments to show [the] voltage and quantity of the load; [of] all interruptions to service affecting the entire distribution system of any single community or [an] important division of a community; and [include in such record the] date and time of interruption, [the] date and time of restoring service, and when known, [the] cause of each interruption.

(3) When complete distribution systems or portions of communities have service furnished from unattended stations, the utility shall keep these records [shall be kept] to the extent practicable. The records of unattended stations shall show interruptions which require attention to restore service, with [the] estimated time of interruption. Breaker or fuse operations affecting service shall also be indicated even though duration of interruption may not be known.

Section 5. [6.] Voltage and Frequency. (1) Each utility shall adopt a standard nominal voltage or standard nominal voltages, as [may be] required by its distribution system for its entire constant-voltage service, or for each of [the] several districts into which the systems may be divided, which standard voltages shall be stated in every schedule of rates of each utility or in its terms and conditions of service.

(2) [The] Voltage at the customer's service entrance or connection shall be maintained as follows:

(a) For service rendered primarily for lighting purposes, [the] variation in voltage between 5 p.m. and 11 p.m. shall not be more than five (5) percent plus or minus the nominal voltage adopted, and [the] total variation of voltage from minimum to maximum shall not exceed six (6) percent of the nominal voltage.

(b) 1. For service rendered primarily for power purposes, [the] voltage variation shall not at any time exceed ten (10) percent above or ten (10) percent below standard nominal voltage.

2. Where a limited amount of lighting is permitted under these contracts, the entire load shall be considered power as far as voltage variation is concerned.

(c) Where [the] utility['s] distribution facilities supplying customers are reasonably adequate and of sufficient capacity to carry [the] actual loads normally imposed, the utility may require that starting and operating characteristics of equipment on customer['s] premises shall [be such that starting and operating characteristics will] not cause an instantaneous voltage drop of more than four (4) percent of [the] standard voltage nor cause objectionable flicker in other customer's lights.

(d) Equipment supplying constant current circuits shall be [so] adjusted [as] to furnish as nearly as practicable the rated current of the circuit supplied, and in no case shall the current vary more than four (4) percent above or below the circuit rating [of the circuit].

(3) Each utility supplying alternating current shall adopt a standard frequency of sixty (60) hertz [cycles] which shall be stated in the schedule of rates of each utility. [The utility shall maintain this frequency to within three (3) percent above and three (3) percent below the standard at all times; provided, however, that momentary variations in frequency greater than three (3) percent, which are not due to lack of reasonable care on the part of the utility in the selection and operation of equipment, shall not be considered a violation of this rule.]

(4) A frequency meter monitor [standard clock] shall be maintained for [to control] each system frequency. [The] Accuracy of the frequency meter [standard clock] shall be checked each day and [the] frequency shall be governed within [the] limits as set forth in this section [given above] so that the frequency meters [clocks] on the system are correct once daily.

(5) The following shall not be considered a violation of this section: Voltage variations [in voltage] in excess of those [specified] caused by [the] operation of power apparatus on customer['s] premises which [necessarily] require[d] large starting currents and affect only [ing alone] the user of such apparatus, by [the] action of the elements and infrequent and unavoidable fluctuations of short duration due to system operation[, shall not be considered a violation of this rule].

(6) [A] Greater variation of voltage [and frequency] than [herein] specified under this section may be allowed if [when] service is supplied directly from a transmission line, if [or in case of] emergency service, or if in a limited or extended area in which [where] customers are [so] widely scattered [and/]or [that the] business done does not justify close voltage regulation. In such cases the best voltage regulation shall be provided that is practicable under the circumstances.

Section 6. [7.] Voltage Surveys and Records. (1) Every utility shall have [provide itself with] two (2) or more portable indicating voltmeters and two (2) [one (1)] or more recording or graphic voltmeters of type and capacity suited to the voltage supplied. Every utility shall make a sufficient number of voltage surveys to indicate the service furnished from each center of distribution. [, and] To satisfy the commission of its compliance with [the] voltage requirements, each utility shall keep at least one (1) of these instruments in continuous service at some representative point on its system. All records of the most recent voltage surveys taken within the last three (3) calendar years shall be available for inspection by the utility's customers and commission staff.

(2) Each graphic recording voltmeter shall be checked with a working standard indicating voltmeter when it is placed in operation and when it is removed, or periodically if the instrument is in a permanent location. Notations on each chart shall indicate beginning time and date of [when the] registration [began (time and date)] and when the chart was removed, as well as the point where [the] voltage was taken, and [the] results of the check with indicating voltmeter.

Section 7. [8.] Servicing Utilization Control Equipment. (1) Utilities shall service and maintain any equipment they use on customer's premises and shall adjust thermostats, clocks, relays, or time switches, if such devices must be so adjusted to provide service in accordance with their rate provisions.

(2) [The] Time switches used by the utility for controlling equipment such as water heaters and street lights shall be of such quality that the timing mechanism may be adjusted [so as] to

be accurate within ten (10) minutes per month. Time switches used by the utility for controlling street lighting or display lighting shall be inspected or monitored [operation observed] at least once a month and, if in error, adjusted. Time switches shall also be [, and also] adjusted upon complaint if found in error or when service interruptions cause them to be in error by one-half (1/2) hour or more.

(3) Time switches and control devices used by the utility for controlling off-peak appliances shall be inspected or monitored [operation observed] periodically and adjusted if in error, and also adjusted upon complaint if found in error or whenever service interruptions result in error of two (2) hours or more or in supplying service to off-peak appliances during peak periods.

Section 8. [9.] Measuring Customer Service. (1) All energy sold within the State of Kentucky shall be measured by commercially acceptable measuring devices owned and maintained by the utility, except where it is impracticable to meter loads, such as multiple street lighting, temporary or special installations, in which case [the] consumption may be calculated. The utility shall meter its own electrical energy use[d by itself] except when such service is for [the purpose of] emergency or incidental lighting such as outdoor substations, or at remote points on its transmission or distribution lines. All other electrical quantities which the utility's tariff indicates are to be metered shall be metered by commercially acceptable instruments owned and maintained by the utility.

(2) The utility shall regard each point of delivery as an independent customer and meter the power delivered at each point [thereat]. [The practice of] Combined [ing] meter readings shall not be taken at separate points, nor shall [or of measuring the] energy used by more than one (1) residence or place of business on one (1) meter be measured to [for the purpose of] obtain[ing] a lower rate[, is absolutely prohibited].

(3) Metering facilities located at any point where energy may flow in either direction and where the quantities measured are used for billing purposes shall consist of meters equipped with ratchets or other devices to prevent reverse registration and be so connected as to separately meter [separately] energy flow in each direction.

(4) Whenever possible reactive meters required to meet the conditions of a given rate schedule shall be either all ratcheted or none shall be ratcheted. Reactive metering shall not be employed for determining average power factor for billing purposes where energy may flow in either direction or where a customer may generate an appreciable amount of his own requirements.

(5) Meters which are not direct reading and those operating from instrument transformers shall have the multiplier plainly marked on the dial of the instrument or otherwise suitably marked and all charts taken from recording meters shall be marked with the record date, [of the record, the] meter number, customer and chart multiplier.

(6) The register ratio shall be marked on all electro-mechanical meter registers. Meters already in service may be so marked when they are tested.

(7) The watt-hour constant for the meter itself shall be placed on all watt-hour meters. Meters already in service shall be so marked when they come to the meter shop.

Section 9. [10.] Service Connections. (1) The utility shall pay all [the entire] costs of a service drop or an initial connection to its line with the customer's service outlet, except the attachment [ing] of the wire support to [the] customer['s] premises. When the customer's outlet [for any reason] is inaccessible to the utility, or [for any reason] the customer desires that the service outlet on any building be at a location other than that closest to the utility's line, [the] cost of such special construction as [may be found] necessary shall be borne by the customer. The [customer may require the] utility shall [to] furnish at its expense an amount of wire, labor and material equivalent to that furnished for a like service connection not requiring such special construction.

(2) Underground service requirements and regulations shall be established by each utility and be on file with the commission.

(3) All equipment and material furnished by the utility at its own expense shall remain the property of the utility and may be removed by it at any reasonable time after [the] discontinuance of service.

Section 10. [11.] Distribution Line Extensions. (1) Normal extensions. An extension of 1,000 feet or less of single phase line shall be made by a utility to its existing distribution line without charge for a prospective customer who shall apply for and contract to use the service for one (1) year or more and provides guarantee for such service. The "service drop" to customer premises [the house] from the distribution line at the last pole shall not be included in the foregoing measurements. This distribution line extension shall be limited to service where demand does not exceed 25 KVA. Any utility which extends service to a customer who may require polyphase service or whose demand will exceed 25 KVA may require the customer to pay in advance additional cost of construction which exceeds that for a single phase line to serve a 25 KVA demand load.

(2) Other extensions.

(a) When an extension of the utility's line to serve an applicant or group of applicants amounts to more than 1,000 feet per customer, the utility may, if not inconsistent with its filed tariff, require [the] total cost of the excessive footage over 1,000 feet per customer to be deposited with the utility by the applicant or applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer receiving service under such extension will be reimbursed under the following plan: Each year, for a refund period of not less than ten (10) years, [which for the purpose of this rule shall be the refund period,] the utility shall refund to the customer(s) [or customers] who paid for the excessive footage the cost of 1,000 feet of [the] extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom. [, but in no

case shall the] Total amount refunded shall not exceed the amount paid the utility. [After the end of the refund period] No refund shall [will] be [required to be] made after the refund period ends.

(c) For additional customers connected to an extension or lateral from the distribution line, the utility shall refund to any customer who paid for excessive footage the cost of 1,000 feet of line less the length of the lateral or extension.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 1,000 feet of the extension installed for each additional customer connected during the year. [, but in no case shall the] Total amount refunded shall not exceed the amount paid to the utility. [After the end of the refund period from the completion of the extension] No refund shall be made after the refund period ends. [will be required to be made.]

(4) Nothing contained herein shall be construed as to prohibit the utility from making extensions under different arrangements if [provided] such arrangements have been approved by the commission.

(5) Nothing contained herein shall be construed [as] to prohibit a utility from making at its expense greater extensions than herein prescribed, if similar [should its judgment so dictate, provided like] free extensions are made to other customers under similar conditions.

(6) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 1,000 feet upon a finding by the commission that such extension is reasonable.

Section 11. [12.] Distribution Line Extensions to Mobile Homes. (1) All extensions of up to 150 feet from the nearest distribution line [facility] shall be made without charge.

(2) Extensions greater than 150 feet from the nearest distribution line [facility] and up to 300 feet shall be made if [provided] the customer [shall] pays the utility a "customer advance for construction" of fifty (50) dollars in addition to any other charges required by the utility for all customers. This advance shall be refunded at the end of one (1) year if [the] service to the mobile home continues for that length of time.

(3) For extensions greater than 300 feet and less than 1,000 feet from the nearest distribution line [facility], the utility may charge an advance equal to [the] reasonable costs incurred by it for that portion of [the] service beyond 300 feet plus fifty (50) dollars. Beyond 1,000 feet the extension policies set forth in Section 10 [11] of this regulation shall apply.

(a) This advance shall be refunded to the customer over a four (4) year period in equal amounts for each year [the] service is continued. The customer advance for construction of fifty (50) dollars shall be added to the first of four (4) refunds.

(b) If [the] service is discontinued for a period of sixty (60) days, or [should] the mobile home is [be] removed and another does not take its place within sixty (60) days, or is not [be] replaced by a permanent structure, the remainder of the advance shall be forfeited.

(c) No refunds shall be made to any customer who did not make the advance originally.

(4) If a utility implements specific requirements pertaining to mobile homes, such requirements shall be subject to approval by the commission and comply with the provisions of this regulation. [All utilities which have mobile home rules on file which differ from the provisions set out above shall within ninety (90) days after the effective date of this regulation file revised regulations complying with the above provisions.]

Section 12. [13.] Testing Equipment and Standards. (1) Each utility shall maintain sufficient laboratories, meter testing shops, standards, instruments and facilities to determine [the] accuracy of all types of meters and measuring devices used by the utility except as provided in 807 KAR 5:006, Section 13.

(2) The following testing equipment shall be available as minimum requirements for each utility[, and/]or agency making tests or checks for a utility pursuant to 807 KAR 5:006, Section 13(2):

(a) One (1) or more working watthour [rotating] standards and associated devices of capacity and voltage range adequate to test all watt-hour meters used by the utility.

(b) One (1) or more watthour [rotating] standards, which shall be the utility's master watthour [rotating] standards, used for testing the working watthour [rotating] standards of the utility. These standards shall be of an approved type, shall be well compensated for both classes of temperature errors, practically free from errors due to ordinary voltage variations, and free from erratic registration [due to any cause]. These master watthour [rotating] standards shall be of capacity and voltage range adequate to test all working watthour [rotating] standards at all loads and voltages at which they are used. These standards [, and] shall be kept permanently at one place and not used for routine testing.

(c) Working indicating instruments, such as ammeters, voltmeters and wattmeters, of such various types [as are] required to determine the quality of service to customers.

(d) A voltmeter and ammeter, which shall be master indicating instruments, and which shall be used for [the] testing of working indicating and recording instruments. These instruments shall be of an approved type and of accuracy class and range sufficient to determine [the] accuracy of working instruments to within five-tenths (0.5) percent of all ranges and scale deflections at which working instruments are used. They shall be kept permanently at one place and not used for routine testing.

(3) The utility's master watthour [rotating] standards shall not be in error by more than plus or minus three-tenths (0.3) percent at 100 percent power factor, nor more than plus or minus five-tenths (0.5) percent at fifty (50) percent power factor at loads and voltages at which they are used, and shall not be used to check or calibrate working standards unless the master standard has been certified as to accuracy by the commission within the preceding twelve (12) months. Each master watthour [rotating] standard shall have a history card

and calibration data available, and when used to calibrate working standards, correction for any error of the master standard shall be applied.

(4) All working watthour [rotating] standards when regularly used shall be compared with a master standard at least once in every four (4) [two (2)] weeks. Working rotating standards infrequently used shall be compared with a master standard before they are used.

(5) Working watthour [rotating] standards shall be adjusted, if necessary, so that their accuracy will be within plus or minus three-tenths (0.3) percent at 100 percent power factor and within plus or minus five-tenths (0.5) percent at fifty (50) percent lagging power factor at all voltages and loads at which the standard may be used. A history and calibration record shall be kept for each working watthour [rotating] standard showing all pertinent data and [the] name of person performing tests.

(6) After having adjusted working watthour [rotating] standards to the accuracy specified above, service measuring equipment shall be adjusted to within the accuracies required, assuming [the] working watthour [rotating] standards to be 100 percent accurate.

(7) If calibration charts are attached to working watthour [rotating] standards and the error indicated is applied to all tests run and the accuracy on any range has not varied more than two-tenths (0.2) percent during the past twelve (12) regular test periods, [the] accuracy limits may be extended to plus or minus five-tenths (0.5) percent at 100 percent power factor and plus or minus seven-tenths (0.7) percent at fifty (50) percent lagging power factor at all voltages and loads at which the standard may be used.

(8) The utility's master indicating instruments shall not be in error by more than plus or minus five-tenths (0.5) percent of indication at commonly used scale deflections and shall not be used to check or calibrate working indicating instruments unless the master instrument has been checked and adjusted, if necessary, and certified as to accuracy by the commission within the preceding twenty-four (24) months. A calibration record shall be maintained for each instrument.

(9) All working indicating instruments shall be checked against master indicating instruments at least once in each six (6) months. If the working instrument is found appreciably in error at zero or in error by more than one (1) percent of indication at commonly used scale deflections, it shall be adjusted. A calibration record shall be maintained for each instrument showing all pertinent data and [the] name of person performing tests.

Section 13. [14.] Check of Standards by Commission. (1) Each utility, and/or agency making tests or checks for a utility, shall submit to the commission Meter Standards Laboratory, its master watthour [rotating] standard once in each year, and its master indicating voltmeter and ammeter once in each two (2) years.

(2) At the discretion of the commission any or all of these required tests may be made at the utility's or agency's testing facility by means of portable transfer standards [maintained by the commission]. If the standards satisfy the requirements [of the rules and regulations] of the commission a Certificate of Accuracy shall be issued by the commission's Division of Engineering.

(3) Each utility which normally checks its own master watthour [rotating] standards and master indicating instruments against primary standards such as precision wattmeters, volt boxes, resistances, standard cells, potentiometers, and timing devices, shall calibrate the master watthour [rotating] standards and indicating instruments before they are submitted to the commission for test, and attach to them a record of such calibration.

Section 14. [15.] Testing of Metering Equipment. (1) [The] Testing of any unit of metering equipment shall consist of a comparison of its accuracy with a standard of known accuracy. All metering equipment shall be in good order, and shall be adjusted to as close to zero error as possible.

(2) No meter or measuring device shall be deliberately set in error by any amount. Because of unavoidable irregularities of work done on a commercial scale, some accuracy tolerance shall [must] be allowed. Meters shall be set as near as practicable to 100 percent accuracy but in no case shall the inaccuracy exceed one (1) percent. [In a properly run shop, most meters can be set within one-half (1/2) percent and virtually all can be set within one (1) percent.] Further, meters with defective parts shall be repaired regardless of their accuracy.

(3) [When tests will be made.] Metering equipment, including instrument transformers and demand meters, shall be tested for accuracy [within one (1) year] prior to being placed in service, periodically in accordance with the schedule below, upon complaint, when suspected of being in error, or [and] when removed from service for any cause.

Period Test Schedule	
Self-Contained Meters	
Single phase	8 years
3 wire network	8 years
Polyphase	6 years
Meters used with instrument transformers	
Single phase	6 years
Polyphase	4 years
Demand Meters	
Indicating block-interval and lagged-demand meters	same as associated watt-hour meter
Graphic and pulse operated recording demand meters	2 years
Instrument Transformers	
Current: high burden test	same as associated watt-hour meter
Potential: secondary voltage test	same as associated watt-hour meter
Var-hour Meters	same as associated watt-hour meter
Direct Current Watt-hour Meters:	
Up to and including 6 KW	4 years
Over 6 KW through 100 KW	2 years
Over 100 KW	1 year

(4) [Where tests will be made.] Tests may be made at a meter shop, on the customer's premises, or in a mobile shop.

Section 15. [16.] Sample Testing of Single Phase Meters. A utility desiring to adopt a scientific sample meter testing plan for single phase meters [rated twelve (12) KVA and less] shall submit its application to the commission for approval. Upon [such] approval the sample testing plan may be followed in lieu of the periodic test prescribed in Section 14 [15](3) of this regulation. The plan shall include the following:

(1) Meters shall be divided into separate groups to recognize differences in operating characteristics due to changes in design, taking into consideration date of manufacture and serial number.

(2) The sampling procedure shall be based upon accepted statistical principles.

(3) The same sampling procedure shall be applied to each group.

(4) Each utility authorized to test meters by sample meter testing plan shall comply with the following conditions:

(a) The number of meters in addition to the sample shall be taken from those meters in each group longest in service since last test unless a particular meter type is known to be increasing the percentage of meters requiring test for the sample group. In such a case where a particular meter type is increasing the percentage of meters requiring test in any group, these meters may be selected first regardless of test date with any additional tests as required for that group coming from those in that group longest in service since last test. [Each year, after the sampling procedure has been applied to each group of meters and the accuracy of the groups determined, the utility shall use the following table to determine the percentage of the total meters in each group to be tested. The number of meters in the sample tested may be included in the total when determining the number of additional meters required to be tested from the table below. The number of meters in addition to the sample shall be taken from those meters in each group longest in service since the last previous test.]

Percentage of Meters Within Limits of 2% Fast or Slow (Indicated by Sample)		Percentage of Meters to be Tested the Next Year [Annually]
99.0	100.0	2
98.0	98.9	4
97.0	97.9	6
96.0	96.9	8
95.0	95.9	10
93.0	94.9	12
91.0	92.9	14
Less than	91.0	16

(b) Provided, however, that no meter shall remain in service without periodic test for a period longer than twenty-five (25) years.

(5) Whenever a meter is found to be more than two (2) percent fast or slow, refunds or back billing shall be made for the period during which the meter error is known to have existed or if not known for one-half (1/2) the elapsed time since the last [previous] test but in no case to exceed three (3) years.

Section 16. [17.] Test Procedures and Accuracy Requirements. (1) Meters and[/or] associated devices shall be tested at the loads indicated below and adjusted as close as practicable to zero error when found to exceed the tolerance prescribed below.

A. C. Watt-hour Meters

% of Test Current	Power Factor	Allowable Tolerance
100	1.0	+ or - 1.0%
10	1.0	+ or - 1.0%
100	0.5	+ or - 1.0%

D. C. Watt-hour Meters

% of Test Current	Allowable Tolerance
100	1.0%
10	1.0%

(a) Only one (1) test run shall normally be required at each test configuration. However if the test indicates the meter is more than two (2) percent in error fast or slow, [one (1) or more] additional tests shall be made to verify [the] accuracy prior to refunding or back billing the customer.

(b) When a meter is tested on complaint or request, additional test runs shall [should] be made and care exercised to insure that any trouble with the meter will be detected.

(c) For refund and back billing purposes, [the] accuracy of the meter shall be determined by adding the average registration at light load (ten (10) percent of test current) and the average registration at full load (100 percent of test current) and dividing by two (2).

(2) Demand meters. A demand meter, demand register, or demand attachment used to measure customer's service shall:

(a) Be in good mechanical and electrical condition.

(b) Have proper constants, indicating scale, contact device, and resetting device.

(c) Not register at no load.

(d) Be accurate to the following degrees:

1. Graphic meters which record quantity-time curves and integrated-demand meters shall be accurate to within plus or minus two (2) percent of full scale throughout their working range. Timing elements measuring specific demand intervals shall be accurate to within plus or minus two (2) percent and the timing element which serves to provide a record of the time of day when [the] demand occurs shall be accurate to within plus or minus four (4) minutes in twenty-four (24) hours.

2. Lagged-demand meters shall be accurate to within plus or minus two (2) percent at final indication.

(3) Instrument transformers.

(a) Instrument transformers used in conjunction with metering equipment to measure customer's service shall:

1. Be in proper mechanical condition and have electrical insulation satisfactory for the service on which used.

2. Have characteristics such that the combined inaccuracies of all transformers supplying one (1) or more meters in a given installation shall [will] not exceed the following:

	100% Power Factor		50% Power Factor	
	10% Current	100% Current	10% Current	100% Current
Purchased after Jan. 1, 1942	1%	.75%	3%	2%
Purchased prior to Jan. 1, 1942	2%	1.50%	5%	3%

(b) Meters used in conjunction with instrument transformers shall be adjusted so that [the] overall accuracies will come within the limits specified in this regulation.

(c) Instrument transformers shall be tested with the meter with which they are associated by making an overall test, or may be checked separately. If [the] transformers are tested separately, [the] meters shall also be checked to see that [the] overall accuracy of [the] installation is within the prescribed accuracy requirements.

(d) [The] Results of tests of instrument transformers shall be kept on record and be available for use during the life of the transformer.

(e) Phase shifting transformers shall have secondary voltages under balanced line voltage conditions within one (1) percent plus or minus of the voltage impressed on the primary.

Section 17. [18.] Location of Meters. (1) Meters shall be installed in a clean, dry, safe, convenient place as free as possible from vibration. Meters shall be easily accessible for reading, testing, and making necessary adjustments and repairs, and where indoor type meters are necessary they shall not be placed in coal or wood bins or on [the] partitions forming bins [same], nor on any unstable supports. Unless absolutely unavoidable, meters shall not be installed in attics, sitting rooms, bathrooms, bedrooms, restaurant kitchens, over doors, over windows, or in any location where [the] visits of the meter reader or tester will cause annoyance to the customer or a severe inconvenience to the utility.

(2) Districts subject to flood are excepted from this rule as far as it applies to the location of meters.

(3) Proper provision shall be made by the customer for [the] installation of the utility's meter. Unless the meter is to be mounted upon a panel or installed within a cabinet, such provision shall consist of a board not less than three-quarters (3/4) of an inch in thickness which shall be mounted not less than five (5) or not more than seven (7) feet from the floor, and in general as near as possible to [the] point of entrance of [the] service. At least six (6) inches clear space shall be available, on all sides of the meter board and not less than thirty (30) inches in front of it. The above provisions as to method of mounting and height from floor do not apply to the installation of weatherproof outdoor meters [of the weatherproof type]. Electric meters shall not be installed [in] close [proximity] to either water or gas meters or anything liable to [cause] damage [to] the meter, thereby constituting a hazard to customer's safety and continuous service.

(4) When more than one (1) meter is installed without a meter cabinet in the same building, proper space shall be allotted and provision made by the customer for locating the meters at one (1) place. When a number of meters are placed in the same cabinet or upon the same board, each meter shall be tagged or marked to indicate the circuit metered by it.

Section 18. [19.] Overhead and Underground Wire Entrances. (1) The overhead wire entrance shall be located on the exterior of the building nearest the utility's lines at a point not less than twelve (12) nor more than thirty (30) feet above the ground. When proper ground clearance cannot be obtained due to height of building, a proper supporting structure shall be provided by the customer unless arrangements can be made with the utility whereby their overhead service wires can be carried to the building in such a manner that these wires will not constitute an obstruction to [the] free passage of vehicles or fire fighting apparatus.

(2) Approval shall be obtained from the utility as to the proper location for a service entrance.

(3) New service drops [entrances], both overhead and underground, shall be installed in accordance with the National Electric Safety Code and any applicable provisions of the National Electrical Code [heretofore adopted].

Section 19. [20. The] Operation of Illegal Gambling Devices. (1) When an electric utility, subject to the jurisdiction of this commission, is notified in writing by a federal or state law enforcement agency, [or by] the Attorney General of Kentucky, [or by] a Commonwealth's Attorney or [by] a County Attorney acting in his official capacity, that [the] electric energy furnished by it is being used or will be used for [the purpose of] operating an illegal gambling device, it shall discontinue rendering electric service to such customer, after reasonable notice to the customer. [, but] No damages, penalty or forfeiture, civil or criminal, shall be found against any electric utility for any act done in compliance with any such notice received from the law enforcement agency or officer. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate judicial determination that such service should not be discontinued, or should be restored.

(2) As provided by KRS 278.230, any electric utility subject to commission [the] jurisdiction [of this commission] shall furnish to the commission upon request [on its demand] any records or information in the possession of such electric utility that may assist in the enforcement of this rule.

Section 20. [21.] Underground Electric Distribution Systems for New Residential Customers [Subdivisions]. (1) Purpose of rules. To formulate requirements for underground electric distribution systems for all new customers of those systems [in new residential subdivisions,] which will insure safe and adequate service and which will be uniformly applicable within a utility's service area.

(2) Applicability. New residential customers and subdivisions as defined below after the effective date of this rule.

(3) Definitions. The following words and terms, when used in these rules, shall have the meaning indicated:

(a) Applicant: the developer, builder or other person, partnership, association, corporation or governmental agency applying for [the] installation of an underground electric supply system.

(b) Building: a structure enclosed within exterior walls or fire walls, built, erected and framed of component structural parts and designed for less than five (5) family occupancy.

(c) [(d)] Distribution system: electric service facilities consisting of primary and secondary conductors, transformers, and necessary accessories and appurtenances for [the] furnishing [of] electric power at utilization voltage.

(d) [(c)] Multiple-occupancy buildings: a structure enclosed within exterior walls or fire walls, built, erected and framed of component structural parts and designed to contain five (5) or more individual dwelling units.

(e) Subdivision: a tract of land which is divided into ten (10) or more lots for the construction of new residential buildings, or for [the] construction of two (2) or more new multiple occupancy buildings.

(4) Rights of way and easements.

(a) The utility shall construct, own, operate and maintain distribution lines only along easements, public streets, roads and highways which are by legal right accessible to the utility's equipment and which the utility has [the] legal right to occupy, and on [the] public lands and private property across which rights of way and easements satisfactory to the utility may be obtained without cost or condemnation by the utility.

(b) Rights of way and easements suitable to the utility for [the] underground distribution facilities shall [must] be furnished by the applicant in reasonable time to meet service requirements. The utility may require that the applicant make the area in which [the] underground distribution facilities are to be located accessible to the company's equipment, remove all obstructions from such area, stake to show property lines and final grade, perform rough grading to [a] reasonable approximation of final grade, and maintain clearing and grading during construction by the utility. The utility may require that suitable land rights be granted to it, obligating the applicant and subsequent property owners to provide continuing access to the utility for operation, maintenance or replacement of its facilities, and to prevent any encroachment in the utility's easement or substantial changes in grade or elevation [thereof].

(5) Installation of underground distribution system within new subdivision.

(a) Where appropriate contractual arrangements have been made, the utility shall install within the subdivision an underground electric distribution system of sufficient capacity and suitable materials which, in its judgment, will assure that the property owners will receive safe and adequate electric service for the foreseeable future.

(b) Facilities required to be underground:

1. All single phase conductors installed by the utility shall be underground. Appurtenances such as transformers, pedestal-mounted terminals, switching equipment and meter cabinets may be placed above ground.

2. Three (3) phase primary mains or feeders required within a subdivision to supply local distribution or to serve individual three (3) phase loads may be overhead unless underground is required by governmental authority or chosen by the applicant, in either of which case the differential cost of underground shall be borne by the applicant.

(c) If the applicant has complied with the requirements herein and with the utility's specifications on file with the commission, and has given the utility not less than 120 days written notice prior to [the] anticipated date of completion (i.e., ready for occupancy) of the first building in the subdivision, the utility shall complete [the] installation thirty (30) days prior to [the] estimated completion date. (Subject to weather and ground conditions and availability of materials and barring extraordinary or emergency circumstances beyond [the] reasonable control of the utility.) However, nothing in these regulations shall be interpreted to require the utility to extend service to portions of [the] subdivisions not under active development.

(6) Schedule of charges.

(a) Within sixty (60) days after the effective date of these rules, each utility shall file with the commission a statement setting forth the utility's policy with respect to electric underground extensions [in residential subdivisions]. Such policy shall provide for [a] payment [to be made] by the applicant for [the purpose of giving effect to] the difference between the cost of providing underground facilities and that of providing overhead facilities. The payment [to be] made by applicant shall be expressed in terms of an amount per foot of conductor or other appropriate measure.

(b) The utility's policy as filed with the commission shall set forth an "estimated average cost differential," if any, between the average or representative cost of underground distribution systems [in residential subdivisions] and of equivalent overhead distribution systems within the utility's service areas. The payment [to be] made by [the] applicant as provided for in paragraph (a) of this subsection shall not be more than the [such] estimated average cost differential and shall be nonrefundable.

(c) Detailed supporting data used to determine [the] estimated average cost differential shall be concurrently filed by the utility with the commission and shall be updated annually.

(d) [The] Applicant may be required to deposit the entire estimated cost of the extension. If this is done, the amount deposited in excess of the normal charge for underground extensions, as provided in paragraph (a) of this subsection, shall be refunded to the applicant over a ten (10) year period as provided in Section 10 [11] of this regulation.

(e) Upon agreement by both parties, if the applicant [should] chooses to perform all necessary trenching and backfilling in accordance with utility specifications, the utility shall credit [the] applicant's cost in an amount equal to the utility's cost for trenching and backfilling.

(f) Utility extension from the property or boundary of the subdivision to its existing supply facilities shall normally be made overhead, and any deposit required for that extension [therefor] is subject to refund under Section 10 [11] of this regulation. Upon

request, such extension may be made underground, if the applicant agrees to pay the excess cost for the underground extension, which excess cost shall be nonrefundable.

(g)1. Point of service shall be that point where utility [the] facilities [of the utility] join [the] customer['s] facilities, irrespective of the location of the meter. [and] Such point of service shall [will] normally be either at the property line or at the corner of the building nearest the point at which [the] underground systems enter the property to be served, depending upon whether the utility or the customer owns the underground service lateral.

2. If established utility practice dictates service termination at the customer's property line, the utility shall credit the applicant fifty (50) dollars or the equivalent cost of an overhead service line to the applicant's meter base, whichever is greater.

3. Where established utility practice does not dictate service termination at the customer property line, the utility shall include in its underground plan the furnishing, installation, ownership, and maintenance of the service lateral to the meter base providing the applicant installs in the building adequate electric service entrance capacity to the satisfaction of the utility to assure that the underground service conductors will be adequate to handle present and future load requirements of the building. [; and] In this instance the utility will determine the size and type of [the] service lateral conductors and appurtenances to be used in any installation.

4. If, by mutual agreement of the parties, service terminates at some other point on the building or property, the applicant shall pay the full cost of any additional extension required in excess of that provided for in paragraph (g)1, 2 and 3 of this subsection.

(h) When an existing utility-owned supply circuit or service lateral requires replacement or reinforcement due to added loads, etc., the utility at its expense will replace or reinforce it.

(i) Nothing in this regulation [herein contained] shall be construed to prevent any utility from assuming [all or] any part of the cost differential of providing underground distribution systems within subdivisions, provided the utility demonstrates to the [satisfaction of the] commission that such practice will not result in increased rates to the general body of rate payers.

(j) The utility shall not be obligated to install any facility within a subdivision until satisfactory arrangements for [the] payment of charges have been completed by the applicant.

(7) Cooperation by applicant. [The] Charges specified in these rules are based on the premise that each applicant will cooperate with the utility in an effort to keep the cost of construction and installation of the underground electric distribution system as low as possible and make satisfactory arrangements for [the] payment of the above charges prior to [the] installation of the facilities.

(8) Construction. All electrical facilities shall be installed and constructed to comply with applicable codes, [and the] rules and regulations of the commission.

Section 21. [22.] Deviations from Rules. In special cases for good cause shown [applications to and approval by,] the commission may permit deviations from these rules.

GEORGE EDWARD OVERBEY, JR., Chairman
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 15, 1989 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 10 a.m. at the Public Service Commission's office, Hearing Room No. 2, 677 Commanche Trail, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Claude G. Rhorer, Jr., Acting Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Claude G. Rhorer, Jr.

(1) Type and number of entities affected: This regulation affects 29 electric utilities under the jurisdiction of the agency.

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

1. First year: Section 7(1): Each electric utility will be required to have two rather than one recording or graphic voltmeter for measuring voltage, thereby keeping one in continuous use at all times. Most utilities already have at least two meters. Section 21: There may be insignificant increased operating costs for the utility in the application of underground electric distribution systems requirements for all new residential customers, not just in new subdivisions; however, most utilities have already adopted this application.

2. Continuing costs or savings: Any continuing costs or savings, if any, will be insignificant and will be absorbed in operating expenditures and returned in rates.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Section 11(1): Quantification of distribution line extensions fairly attributes costs of extending service, i.e. customers who require more than 25 KVA may be required to pay the extra costs involved in extension. Any anticipated costs to the utility will be offset by less restrictive requirements in Sections 6(3), 7(1), 11(1), and 15(3).

(b) Reporting and paperwork requirements: Section 7(1): Utilities will be required to maintain voltage surveys for three calendar years. There will be no other discernible increase in reporting requirements.

(2) Effects on the promulgating administrative

body: The majority of language changes are either for compliance with revised industry standards, to meet new drafting rules for clarification, or to upgrade to universally accepted technological terminology.

(a) Direct and indirect costs or savings: Changes will have no fiscal impact on the agency.

1. First year: There will be no fiscal impact.

2. Continuing costs or savings: There will be no fiscal impact.

3. Additional factors increasing or decreasing costs: There are none.

(b) Reporting and paperwork requirements: There will be no increase or decrease in current overall reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Majority of changes reflect editorial and clarification changes and upgrading to accepted terminology.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict with current laws or policies has been identified.

(a) Necessity of proposed regulation if in conflict: No conflict.

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

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

TIERING: Was tiering applied? No. This is not a new regulation. Tiering was not necessary; most changes are editorial or clarifying in nature.

PUBLIC PROTECTION & REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:054. Small power production and cogeneration.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040(3)

NECESSITY AND FUNCTION: Under Title II of the Public Utility Regulatory Policies Act of 1978, the Federal Energy Regulatory Commission (FERC) was required to adopt rules to encourage cogeneration and small power production by requiring electric utilities to sell electricity to qualifying cogeneration and small power production facilities and purchase electricity from such facilities. Section 210(f) of this Act requires the state regulatory authority with jurisdiction over electric utilities to implement the FERC rules. As the state regulatory authority for Kentucky, the Public Service Commission proposes to implement those rules.

Section 1. [2.] Definitions. [(1) "Commission" means the Kentucky Public Service Commission.]

(1) [(7)] "Avoided costs" means [the] incremental costs to an electric utility of electric energy or capacity or both which, if not [but] for the purchase from the qualifying facility [or facilities], the [such] utility would generate itself or purchase from another source.

(2) [(10)] "Back-up power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.

(3) "Cogeneration facility" means equipment used to produce electricity and another form of useful energy which is used for industrial purposes or commercial heating or cooling purposes through [the] sequential use of input energy and which facility meets criteria at Title 18 CFR Part 292.203(b) and 292.205, as published in the Federal Register on March 20, 1980 (45 F.R. 17959) and [herein] incorporated by reference.

(4) [(8)] "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to [the] installation and maintenance of [the] physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent those [such] costs are in excess of [the] corresponding costs which the utility would have incurred if it had not engaged in interconnected operations but instead had generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity or both from other sources. Interconnection costs do not include any costs included in [the] calculation of avoided costs.

(5) [(11)] "Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

(6) [(12)] "Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.

(7) [(5)] "Purchase" means [the] purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

(8) [(2)] "Qualifying facility" means a cogeneration facility as defined in this regulation [herein], construction of which was commenced on or after November 9, 1978, or a small power production facility as defined in this regulation [herein], construction or substantial renovation of which was begun on or after November 9, 1978, neither of which is owned in equity interest greater than fifty (50) percent by a person primarily engaged in generation of electric power other than as described in these rules.

(9) [(6)] "Sale" means [the] sale of electric energy or capacity or both by an electric utility to a qualifying facility.

(10) [(4)] "Small power production facility" means an arrangement of equipment for the production of electricity with capacity no greater than eighty (80) megawatts, which equipment is located within a one (1) mile radius or, if [in the case of] hydroelectric facilities, on the same impoundment of water, and which equipment is [must be] powered at least seventy-five (75) percent by biomass, waste, renewable resources, or any combination thereof and not more than twenty-five (25) percent by coal or oil or natural gas or any combination thereof and which meets criteria at Title 18 CFR Part 292.204 as published in the Federal Register on March 20, 1980 (45 F.R. 17959) [herein] incorporated by reference in this regulation.

(11) [(9)] "Supplementary power" means

electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.

(12) [(13)] "System emergency" means a condition on a utility's system which may [is liable to] result in imminent significant disruption of service to customers or may [is] imminently [liable to] endanger life or property.

Section 2. [1.] General. [It is the purpose of] This regulation [to] sets forth the manner in which the Public Service Commission will discharge [the] duties conferred upon it by Title II of the Public Utility Regulatory Policies Act of 1978.

Section 3. Applicability. This regulation shall apply to any electric utility, subject to the jurisdiction of the commission, which purchases from or sells to any qualifying facility.

Section 4. Criteria for Qualifying Facility. (1) Criteria for qualification of small power production facilities and cogeneration facilities constructed on or after November 9, 1978, are the same as those adopted by the Federal Energy Regulatory Commission including Title 18 CFR Parts 292.203, 292.204, 292.205, and 292.206 as published in the Federal Register March 20, 1980 (45 F.R. 17959) and [herein] incorporated by reference in this regulation.

(2) The qualifying status of small power production facilities and cogeneration facilities, the construction of which was commenced prior to November 9, 1978, but which were not selling power to the interconnected utility under an existing contract as of November 9, 1978, will be determined under this regulation on a case-by-case basis.

(3) Small power production facilities and cogeneration facilities constructed prior to November 9, 1978, but which were selling power to their interconnected utility under an existing contract on that date will not be considered qualifying facilities. Upon [At the] expiration of the power sales contract between a small power production or cogeneration facility and the electric utility, the commission will determine the qualifying status of the facility under this regulation on a case-by-case basis.

Section 5. (1)(a) All electric utilities with annual retail sales greater than 500 million kilowatt hours shall provide data to the commission from which avoided costs may be derived not later than June 30, 1982, and not less often than every two (2) years thereafter unless otherwise determined by the commission.

(b) In the case of a utility required to purchase all of its electricity from a wholesale supplier by contract, the utility shall file the contracts under which its capacity and energy are purchased, in addition to data provided by the supplying utility required by subsection (2) of this section. [The data required under subsection (2) of this section shall be provided by the supplying utility.]

(2) Each electric utility as described in subsection (1) of this section shall file with the commission and shall maintain for public inspection the following data:

(a) [The] Estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of not more than 100 megawatts for systems with peak demand of 1,000 megawatts or more, and in blocks equivalent to not more than ten (10) percent of [the] system peak demands for systems with peak demand of less than 1,000 megawatts. [The] Avoided costs shall be stated on a cents per kilowatt-hour basis during daily, seasonal peak and off-peak periods, by year, for the current calendar year, and each of the next five (5) years.

(b) The electric utility's plan for [the] addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding ten (10) years.

(c) [The] Estimated capacity costs at [the] completion of [the] planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy cost of each unit, expressed in cents per kilowatt-hour. These costs shall be expressed separately for each individual unit and individual planned firm purchases.

(3)(a) Any data submitted by an electric utility beginning with the scheduled June 30, 1982, data shall be subject to review by the commission.

(b) The electric utility has the burden of proof to justify the data it supplies.

Section 6. Electric Utility Obligations. (1) Each electric utility shall purchase any energy and capacity which is made available from a qualifying facility except as provided in subsections (2) and (3) of this section.

(2) The qualifying facility's right to sell power to the utility shall be curtailed in periods when purchases from qualifying facilities will result in costs greater than those which the utility would incur if it [did not make such purchases but instead] generated an equivalent amount of energy instead of purchasing that energy.

(3) During any system emergency, an electric utility may discontinue:

(a) Purchases from a qualifying facility if such purchases would contribute to such emergency; [and/]or

(b) Sales to a qualifying facility if [provided that such] discontinuance is [on a] nondiscriminatory [basis].

(4) Any utility which invokes subsection (2) of this section shall provide adequate notice to the qualifying facility. In addition, the commission may require the utility to furnish documentation within ten (10) working days after [the] suspension occurs. If the utility fails to provide adequate notice or incorrectly identifies such a period, it will be required to reimburse the qualifying facility for energy [and/]or capacity or both available for delivery on a legally enforceable basis as if that [such a] period had not occurred.

(5) Rates for sale. An electric utility shall sell power to a qualifying facility upon request except as provided in subsection (3)(b) of this section. [The] Rates for sale shall [must] be just and reasonable, in the public interest and nondiscriminatory. Rates for sale which are based on accurate data and consistent system costing principles shall not be considered to discriminate against any qualifying facility to

the extent that such rates apply to the utility's other customers with similar load or [other similar] cost-related characteristics. If a utility provides back-up or supplementary power to a qualifying facility, then [the] costs associated with that capacity reservation are properly recoverable from the qualifying facility.

(6) Obligation to interconnect.

(a) An electric utility is required to make any interconnection with a qualifying facility that is necessary for purchase and sale. Owners of qualifying facilities shall be required to pay for any additional interconnection costs to the extent that those [such] costs are in excess of costs [those] that the electric utility would have incurred if the qualifying facility's output had not been purchased. Payment shall be over a reasonable period of time, and [the] terms of payment shall be a part of the contract between the electric utility and the qualifying facility.

(b) Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with applicable standards established in accordance with Section 7(6) of this regulation.

Section 7. Purchase of Output from Qualifying Facilities. (1) Qualifying facilities shall be permitted the option of either:

(a) Using [the] output of the qualifying facility to supply their power requirements and selling their surplus; or

(b) Simultaneously selling their entire output to the interconnecting utility while purchasing their own requirements from that utility.

(2) Rates for purchase of output of qualifying facility with design capacity of 100 kilowatts or less. Each electric utility shall prepare standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. These rates shall be just and reasonable to the electric customer [consumer] of the utility, in the public interest and nondiscriminatory. These rates shall be based on avoided costs after consideration of the factors listed in subsection (5)(a) of this section and shall be subdivided into an energy component and a capacity component.

(a) Rates for power offered on an "as available" basis shall be based on the purchasing utility's avoided energy costs estimated at [the] time of delivery.

(b) Rates for power offered on all legally enforceable obligations shall be based at the option of the qualifying facility on either [the] avoided costs at the time of delivery or [the] avoided costs at the time the legally enforceable obligation is incurred. The capacity component shall be based on [the] supply characteristics of [the] qualifying facilities, and the aggregate capacity value of all 100 kilowatts or less facilities which supply power on a legally enforceable basis.

(3) Electric utilities shall design and offer a standard contract to qualifying facilities with a design capacity of 100 kilowatts or less. This contract shall be subject to commission [the] approval [of the commission].

(4) Rates for purchase of output of qualifying facility with design capacity over 100 kilowatts. Each electric utility shall provide a standard rate schedule for qualifying facilities with [a] design capacity over 100 kilowatts. The rate schedule shall be based on avoided costs which shall be subdivided into an energy component and a capacity component. These rates shall be used only as the basis for negotiating a final purchase rate with qualifying facilities after proper consideration has been given to factors affecting purchase rates listed in subsection (5)(a) of this section. Negotiated rates shall be just and reasonable to the electric customer [consumer] of the utility, in the public interest and nondiscriminatory. If the electric utility and qualifying facility cannot agree on the purchase rate, then the commission shall determine the rate after a hearing.

(a) Rates for power offered on an "as available" basis shall be based on the purchasing utility's avoided costs estimated at [the] time of delivery.

(b) Rates for energy or capacity or both offered on a legally enforceable basis shall be based at the option of the qualifying facility on either [the] avoided costs at the time of delivery or [the] avoided costs at the time the legally enforceable obligation is incurred.

(5) Factors affecting rates for purchase for all qualifying facilities. In determining the final purchase rate, the following factors shall be taken into account:

(a) [The] Availability of capacity or energy from a qualifying facility during the system daily and seasonal peak. The utility should consider for each qualifying facility the ability to dispatch, reliability, terms of contract, duration of obligation, termination requirements, ability to coordinate scheduled outages, usefulness of energy and capacity during system emergencies, individual and aggregate value of energy and capacity, and [the] shorter construction lead times associated with cogeneration and small power production.

(b) [The] Ability of the electric utility to avoid costs due to deferral, cancellation, or downsizing of capacity additions, and [the] reduction of fossil fuel use.

(c) [The] Savings or [the] costs resulting from line losses that would not have existed in the absence of purchases from a qualifying facility.

(6) Utility safety and system protection requirements. The qualifying facility shall provide adequate equipment to insure the safety and reliability of interconnected operations. This equipment shall be designed to protect [the] interconnect operations between the qualifying facility and the electric utility grid. If the electric utility and qualifying facility cannot agree, then the qualifying facility may apply to the commission for a determination of adequate system protection.

(7) Additional services to be provided to qualifying facilities. Upon request by [of] a qualifying facility each electric utility shall provide supplementary power, back-up power, maintenance power, and interruptible power. The commission may waive this requirement if the electric utility demonstrates that compliance with it would [result in] impair[ing] its ability to render adequate service to its other customers or would be unduly burdensome [place an undue burden on it].

(8) Wheeling. The electric utility may wheel power to another utility if the qualifying facility approves. This provision shall not eliminate the responsibility of the

interconnected electric utility to purchase power from the qualifying facility if the qualifying facility does not approve the wheeling transaction. The electric utility which agrees to purchase [the] power shall pay to the qualifying facility its avoided cost connected with the transmission of this power adjusted for line losses.

(9) This regulation is not intended to restrict voluntary agreements between qualifying facilities and electric utilities. All contracts between qualifying facilities and electric utilities shall be provided to the commission for its review.

(10) Disputes. The commission's inquiry and determination shall [will] be limited to those parts of a proposed contract which are in dispute.

GEORGE EDWARD OVERBEY, JR., Chairman
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 15, 1989 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 10 a.m. at the Public Service Commission's office, Hearing Room No. 2, 677 Commanche Trail, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Claude G. Rhorer, Jr., Acting Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Claude G. Rhorer, Jr.

(1) Type and number of entities affected: Effects up to 29 electric utilities currently under the agency's jurisdiction.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to the utilities. Changes are for clarification, consistency with the regulation, or to comply with new promulgation rules for administrative regulations.

1. First year: There is no fiscal impact the first year.

2. Continuing costs or savings: There is no continuing fiscal impact.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: Changes are for clarification, consistency, or compliance with new promulgation rules; therefore, there is no impact on agency operation. Regulations will be easier to read.

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings for the agency.

1. First year: There is no fiscal impact the first year.

2. Continuing costs or savings: There is no continuing fiscal impact.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: There are no additional reporting requirements for the agency.

(3) Assessment of anticipated effect on state and local revenues: There is no fiscal impact on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Inasmuch as changes were for clarification, consistency, or compliance with new promulgation rules, alternatives were not necessary.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These changes are not in conflict with any current statutes or regulations.

(a) Necessity of proposed regulation if in conflict: No conflict.

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

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

TIERING: Was tiering applied? No. This is not a new regulation, nor were there substantive changes. Therefore, tiering was not necessary.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:061. Telephone.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishings of any commodity by the utility. This regulation establishes general rules which apply to telephone utilities.

Section 1. [3.] Definitions. [In the interpretation of this regulation, the following definitions shall be used:]

[(1) "Commission" means the Public Service Commission.]

(1) [(7)] "Access [Subscriber] line" means [the] wires or channels used to connect network interface [the telephone equipment] at the subscriber['s] premises with the central office.

(2) [(17)] "Average busy season; busy hour traffic" means the average traffic volume for the busy season, busy hours.

(3) [(16)] "Base rate area" means the developed portion or portions within each exchange service area as set forth in [the] telephone utility['s] tariffs, maps or descriptions. Access line [Main station] service within this area is furnished at uniform rates without mileage charges.

(4) [(24)] "Basic or regular [or 'basic'] service" includes all one (1), two (2), four (4) and eight (8) party access line [multiparty

primary and extension] service.

(5) [(18)] "Busy hour" means the two (2) consecutive half-hours during which the greatest volume of traffic is handled in the central office.

(6) [(19)] "Busy season" means that period of the year during which the greatest volume of traffic is handled in the central office.

(7) [(13)] "Calls" means [customer's] telephone messages attempted by a customer.

(8) [(5)] "Central office" means a unit of a telephone utility, including [the] switching equipment and appurtenant facilities used to establish connections between customer lines or between customer['s] lines and trunk or toll lines to other central offices within the same or at other exchanges.

(9) [(8)] "Class of service" means the various categories of telephone service generally available to customers, such as business or residence.

(10) [(3)] "Customer or subscriber" means any person, firm, partnership, corporation, municipality, cooperative, organization or governmental agency provided with telephone service by any telephone utility.

(11) [(14)] "Customer trouble report" means any oral or written report from a subscriber or user of telephone service relating to a physical defect or difficulty with the operation of telephone facilities. [One (1) report shall be counted for each oral or written report received even though it may duplicate a previous report or merely involve an inquiry concerning progress on a previous report. Also, a separate report shall be counted for each telephone or PBX switchboard position reported in trouble when several items are reported by one (1) customer at the same time, unless the group of troubles so reported is clearly related to a common cause.]

(12) [(23)] "Direct distance dialing (DDD)" means customer dialing over the nationwide intertoll telephone network of calls to which toll charges are applicable. No operator assistance is required for DDD calls.

(13) [(4)] "Exchange" means a geographical area established by a telephone utility for the administration of telephone service. It may [usually] embrace a city, town, or village and its environs or a portion thereof. It may consist of one (1) or more central offices together with associated plant used in furnishing communication service in that area.

(14) [(26)] "Extended area service (EAS)" means the provision of toll free calling between or among two (2) or more exchange areas. [extension of a major exchange area to include other surrounding exchange areas. Toll-free dialing is permitted within the extended area in return for metropolitan area rates.]

[(11) "Farmer line" (see service line).]

(15) [(9)] "Grade of service" means the number of parties served on a telephone line such as one (1) party, two (2) party, four (4) party, etc.

(16) [(27)] "Intercept service" means a service arrangement provided by the utility whereby calls placed to a disconnected, discontinued, or improperly listed telephone number are intercepted and the calling party is informed that the called telephone number has been disconnected, discontinued, changed, [etc.,] or that calls are being received by another telephone. This may be accomplished by recording or by operator.

(17) [(12)] "Message" means a completed customer telephone call.

(18) [(6)] "Outside plant" means [the] telephone equipment and facilities installed on, along, over or under streets, alleys, highways, or on private rights-of-way between [the] central office and customer's location or between central offices.

(19) [(28)] "Regrade" means an application for a different class [and/]or grade of service.

(20) [(10)] "Service line" means those facilities owned and maintained by a customer or group of customers. [which] Lines of those facilities are connected with [the] facilities of a telephone utility at an agreed point for communication service.

(21) [(30)] "Service objectives," as construed in these regulations, shall mean a designated number or percentage, applicable to [the] various service measures, [the] maintenance of which shall indicate a minimum satisfactory level of service. [Each utility shall maintain records of the various service measurements by exchange or district, and shall submit a summary of said records to the commission monthly. If performance by the utility falls below the service objective for two (2) consecutive months, the utility shall also submit to the commission a report by exchange or district setting forth the action taken or planned to correct same.]

(22) [(25)] "Special service" means unusual and complex services such as data terminals, teletypewriter, full period circuits, wide area telephone service (WATS), or other items that require special engineering, installation or manufacturing to provide [the] service.

(23) [(20)] "Switching service" means switching performed for service lines.

(24) [(15)] "Tariff" means the entire body of rates, tolls, rentals, charges, classifications, regulations and rules, adopted by a public utility in accordance with [the] laws governing the provisions of public utility service.

(25) [(2)] "Telephone utility" means any person, firm, partnership, cooperative, organization or corporation [engaged in] furnishing [of] telephone service to the public under the jurisdiction of the commission.

(26) [(21)] "Toll connecting trunks" means a general classification of trunks carrying toll traffic and ordinarily extending between a local office and a toll office.

(27) [(22)] "Toll station" means an access line [a telephone] and associated equipment connected to a toll line or directly to a toll board.

(28) [(29)] "Traffic" means telephone call volume, based on number and duration of messages.

Section 2. [1.] General Provisions. This regulation governs [the] furnishing of intrastate telephone service and facilities to the public by telephone utilities subject to the jurisdiction of the commission. [The purpose of] These rules [is to] set forth reasonable service standards and procedures for rendering adequate and satisfactory service to the public. [to the end that adequate and satisfactory service will be rendered to the public.]

Section 3. [2.] Acceptable Standards. Unless otherwise specified by the commission, the utility shall use [the] applicable provisions in

the following publications as standards of accepted good engineering practice for [the] construction and maintenance of plant and facilities, [herein] incorporated in this regulation by reference. Copies are available at the Commission office, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602. [:]

(1) National Electrical Safety Code; [ASA] C2 1987 [1981] Edition;

(2) National Electrical Code; ANSI/NFPA 70, 1987 Edition [or ANSI C-1, 1981 Edition].

[Section 4. Switching Service. Telephone companies shall not provide switching service to service lines except to dangerous, inaccessible, restricted or remote areas. In such cases the service lines shall meet appropriate technical criteria so as not to impair or interfere with the service of others, or adversely affect the facilities of the telephone company.]

Section 4. [5.] Basic Utility Obligations. (1) Each telephone utility shall provide telephone service to the public in its service area in accordance with its rules and tariffs on file with the commission. Such service shall meet or exceed [the] standards set forth in this regulation.

(2) Each telephone utility shall [has the obligation of] continually review[ing] its operations to assure [the furnishing of] adequate service.

(3) Each telephone utility shall maintain records of its operations in sufficient detail [as is] necessary to permit [such] review, and those [such] records shall be [made] available for inspection by the commission upon request.

(4) Each utility shall maintain records of various service objectives by exchange, district, or as otherwise approved by the commission. A records summary shall be submitted monthly to the commission. If the utility's performance falls below the service objective for two (2) consecutive months, the utility shall submit to the commission a report setting forth action taken or planned to correct performance levels.

(5) [(4)] Where a telephone utility is generally operated in conjunction with any other enterprise, suitable records shall be maintained so that [the] results of the telephone operation may be determined upon reasonable notice and request by the commission.

Section 5. [6.] Directories. (1) Telephone directories shall be published at least yearly for each exchange listing the name, location [address] and telephone numbers of all customers, except public telephones and numbers unlisted at [a] customer['s] request, which [who] can be called within the service area without a long distance charge.

(2) Upon issuance, a copy of each directory shall be distributed by each utility to all its subscribers [customers] served by that directory, and a copy of each directory shall be furnished to the commission.

(3) The name of the telephone utility, the area included in the directory, and the year of issue shall appear on the front cover. Information pertaining to emergency calls such as for [the] police and fire departments shall appear conspicuously in the front part of [the] directory pages.

(4) The directory shall contain such instructions concerning placing local and long distance calls, calls to repair and information services, and location of telephone company business offices [as may be] appropriate to the area served by the directory. Rates between frequently called points may also be included.

(5)(a) Information operators shall have access to records which include all listed telephone numbers, except public telephones and numbers that are unlisted [nonpublished] at [the] customer's request, in the area for which they are responsible for furnishing information service.

(b) Intercept operators shall have access to records which indicate the status of all telephone numbers in the area for which they are responsible for furnishing intercept service.

(6) In the event of an error in the listed number of any customer, the telephone utility shall intercept all calls to the listed number for [a] ninety (90) days [period of time] provided the number is not in service. In the event of an error or omission in the name listing of a customer, such customer's correct name and telephone number shall be in the files of [the] information or intercept operators and the correct number furnished the calling party either upon request or interception.

(7) Whenever any customer's telephone number is changed after a directory is published, and if central office capacity exists to do so, the utility shall intercept all calls to the former number for [a] ninety (90) days [period of time], and give the calling party the new number if the customer so desires.

(8) When a large group of number changes are scheduled due to additions or changes in plant, records or operations [which will necessitate a large group of number changes are scheduled], reasonable notice shall be given to all customers so affected even though the additions or changes may be coincident with a directory issue.

Section 6. [7.] Exchange Maps. (1) Each telephone utility shall file [exchange] maps with the commission showing the current exchange service area for each telephone exchange operated. [, and the] Maps shall be in sufficient detail to reasonably permit locating [the] exchange service area boundaries in the field. A copy of such map shall be included in the utility's tariff, in accordance with [the] requirements of 807 KAR 5:011.

(2) With every revised map, the telephone utility so filing shall submit proof of notice of the proposed revision to each telephone utility whose exchange area adjoins [the] exchange area boundary lines or is located reasonably near [the] territory which would be changed by such revisions. This shall include provision for the signature of an official of each telephone utility concerned on the copy of the exchange maps filed with the commission.

Section 7. [8.] Tariffs. Each telephone utility shall file with its tariff the various exchange areas, base rate areas where they exist, [the] conditions and circumstances under which service will be furnished, and [a] definition of the classes and grades of service available to customers, in accordance with 807 KAR 5:011.

Section 8. [9.] Extensions of Service. (1) The

utility shall extend service to applicants within the base rate area where it exists without a construction charge except in cases of special requirements as identified by the utility in its approved tariff.

(2) Each telephone utility shall make an extension of 750 feet or less, free of charge, from existing plant facilities to provide [multiparty] service to applicants who shall apply for and contract to use the service for up to one (1) year [or more] and [provide a] guarantee payment for the [of such] service. [Not more than 250 feet of the extension shall be over private property. However, when the extension over private property will be used to serve customers in general or the private property routing is selected by the utility, such construction shall be treated as being on public property and the full extension if required shall be made.]

(3) Other extensions.

(a)1. When an extension to serve an applicant or a group of applicants amounts to more than 750 feet per applicant, the utility may, if not inconsistent with its [their] filed tariff, require the total cost of [the] excessive footage over 750 feet per customer to be paid to [deposited with] the utility by the applicant or [the] applicants, based on [the] average estimated cost per foot of the total extension.

2. Each customer receiving service under such extension will be reimbursed under the following plan: Each year for a refund period of not less than ten (10) years, [which for the purpose of this rule shall be the refund period,] the utility shall refund to any [the] customer [or customers] who paid for the excessive footage the cost of 750 feet of the extension in place for each additional customer connected to the extension installed and not to extensions or laterals therefrom. [, but in no case shall the] Total amount refunded shall not exceed the amount paid the utility. After [the end of] the refund period ends, no refund will be required [to be made].

(b) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 750 feet of the extension installed for each additional customer connected during the year. [, but in no case shall the] Total amount refunded shall not exceed the amount paid to the utility. After [the end of] the refund period ends [from the completion of the extension], no refund shall [will] be required [to be made].

(4) Nothing contained in this regulation [herein] shall be construed [as] to prohibit a utility from making at its expense greater extensions than [herein] prescribed, if similar [should its judgment so dictate, provided like] free extensions are made to other customers under similar conditions.

(5) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 750 feet upon a finding by the commission that such extension is reasonable.

(6) Nothing contained in this regulation [herein] shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by [order of] the commission.

Section 9. [10.] Grade of Service. (1) Within the base rate area, no telephone utility shall place more than four (4) customers on any local exchange access line. Within the service area no telephone utility shall connect more customers on any line than are contemplated under the grade of service charged the customer on such line.

(2) On rural lines where multiparty service is provided, no more than eight (8) customers shall be connected to any local exchange access line [one (1) circuit]. The telephone utility may regroup customers in such a manner as [may be] necessary to carry out the provisions of this regulation [rule].

Section 10. [11.] Provision of Service. (1) It shall be the service objective of all utilities to [ful]fill ninety (90) percent of applications [requests] for regular service within five (5) working days of [the] receipt [of the request] unless [the] applicant specifically requests a later date.

(2) The service objective for regular regrades shall be to [ful]fill ninety (90) percent of applications [requests] within thirty (30) days unless [the] applicant specifically requests a later date.

(3) Applications for special service shall be filled [in] as expeditiously [manner] as equipment and facilities [will] permit.

(4) All applications which are not filled within five (5) working days for initial regular service and within thirty (30) days for regular regrades shall be considered as held applications.

(5) [(8) Additionally,] The utility shall keep a record by exchanges showing [the] name and address of each applicant [for service], [the] date of application, date service desired, [the] class and grade of service applied for, and any [together with the] reason for [the] inability to provide [the] new or regrade service to [the] applicant.

(6) [(9)] When, because of shortage of facilities, a utility is unable to supply telephone service on dates requested by applicant, first priority shall be given to furnishing those services which are essential to public health and safety. In cases of prolonged shortage or other emergency, the commission may require establishment of a priority plan subject to its approval for clearing held orders, and may request periodic reports concerning [the] progress being made.

(7) [(5)] If [When because of] circumstances beyond the control of the utility make it impossible [it is not possible] to provide service within the time limits specified above, the utility shall promptly notify [the] applicant of the reason for [the] delay and give him a commitment date based upon [the] best available information. [Utility personnel shall refrain from making unwarranted commitments without first having ascertained that they can reasonably be met.]

[(6) It shall be the service objective of all utilities to meet ninety-four (94) percent of all commitments made, except for customer caused delays and Acts of God.]

[(7) In those instances where commitments cannot be met, the applicant shall be notified at the earliest possible time.]

Section 11. [12.] Public Telephone Service. In each exchange, the telephone utility shall supply at least one (1) public coin-activated telephone that will be available [to the public] on a twenty-four (24) hour basis. This public coin] telephone shall be located in a prominent location in the exchange and shall be lighted at night. The utility may [shall also] establish additional [other] public telephone service at other locations [where the public convenience will be served]. The commission may direct additional public telephone service upon finding that public convenience would be served.

Section 12. [13.] Discontinuance of Service. (1) When a telephone utility[, subject to the jurisdiction of this commission,] is notified in writing by the [this] commission, [or by a] federal or state law enforcement agency, [or by the] Attorney General of Kentucky, [or by] a Commonwealth's attorney, or [by] a county attorney acting within the agency or officials's [its or his apparent] jurisdiction, that any facility furnished by it is being used or will be used for [the purpose of] transmitting or receiving gambling information, that utility [it] shall discontinue or refuse, to lease, furnish, or maintain [the leasing, furnishing, or maintaining of] such facility, after reasonable notice to the subscriber. [But] No damages, penalty or forfeiture, civil or criminal, shall be recovered from any telephone utility for any act done in compliance with any notice received from the commission or law enforcement agency.

(2) Nothing in this section shall be deemed to prejudice the right of any person affected by this regulation [thereby] to secure an appropriate judicial determination that such facility should not be discontinued or removed, or should be restored.

[(3) As provided by KRS 278.230, any telephone utility subject to the jurisdiction of this commission shall furnish to the commission on its demand any records or information in the possession of such telephone utility that may assist the commission in the enforcement of this rule.]

(3) [(4)] Nothing in this regulation [herein] shall be construed to prevent [the] transmission of information for use in legitimate news reporting of sporting events or contests by recognized news media.

Section 13. [14.] Customer Billing. Bills to customers shall be rendered regularly and shall contain clear listings of all charges. The utility shall comply with reasonable customer requests for an itemized statement of charges. All toll charges shall be itemized separately.

Section 14. [15.] Adequacy of Service. (1) Each utility shall employ recognized engineering and administrative procedures to determine [the] adequacy of service being provided to the customer.

(2) Traffic studies shall be made and records maintained to the extent and frequency necessary to determine that sufficient equipment and an adequate operating force are provided at all times including the busy hour, busy season.

(3) Each telephone utility shall provide for operator assistance on a twenty-four (24) hour per day basis [for both local and long distance service].

(4) Each utility shall employ adequate procedures for assignment of facilities. The assignment record shall be kept current [up to date] and checked periodically to determine if adjustments are necessary to maintain proper balance in all groups.

Section 15. [16.] Dial Service Requirements. Sufficient central office capacity and equipment shall be provided to meet the following minimum requirements during the busy season [at all times including busy season-busy hour]:

(1) Dial tone within three (3) seconds on at least ninety-five (95) percent of telephone calls.

(2) No more than five (5) percent of dialed, local interoffice calls shall experience blockage due to an equipment or all-trunk busy condition. [Complete dialing of called numbers on at least ninety-five (95) percent of telephone calls without encountering an equipment or all-trunk busy condition within the local dialing area.]

(3) Sufficient toll connecting or interexchange trunks shall be provided by each utility in its service area so that no more than three (3) percent of calls offered to the telephone final trunk group will encounter an all-trunks busy condition.

(4) [(3)] Each utility shall employ appropriate procedures to determine [the] adequacy of central office equipment and local interoffice and EAS trunks.

Section 16. [17.] Grounded Circuits. The utility shall not construct any telephone lines less than a two (2) wire circuit or equivalent. [No telephone lines shall be construed as single wire with ground return. Any existing ground return telephone lines shall be converted to metallic or equivalent circuits.]

[Section 18. Metallic Circuits. Telephone utilities shall provide full metallic telephone circuits or equivalent for all customers.]

[Section 19. Toll Connecting Trunks. Sufficient toll connecting or interexchange trunks shall be provided so that at least ninety-seven (97) percent of telephone calls offered to the group will not encounter an all trunks busy condition.]

Section 17. [20.] Transmission Requirements. Telephone utilities shall furnish and maintain adequate plant equipment and facilities to provide satisfactory transmission of communications between customers in their service areas. Transmission shall be at adequate volume levels and free of excessive distortion. Levels of noise and crosstalk shall [be such as] not [to] impair communications.

Section 18. [21.] Minimum Transmission Objectives. (1) [The] Transmission objectives set forth in this regulation [herein] are based upon [the] use of standard Federal Communications Commission registered telephone sets connected to a minimum forty-eight (48) volt dial central office and measured at a frequency of 1,000 cycles.

(2) Access [Subscriber] lines shall[, in general,] have a loop resistance not exceeding the operating design of [the] associated central office equipment.

(3) Telephone utilities shall, as nearly as possible, [have as their objective the] design access line [of subscriber] loops having a transmission loss of no more than eight and five-tenths (8.5) decibels measured to the network interface.

(4) [The] Overall transmission loss, including terminating equipment, on local interoffice trunks shall be no more than seven (7) decibels.

(5) Whenever feasible, [the] overall transmission loss, including terminating equipment, on intertoll trunks and terminating links shall be no more than five (5) decibels. [Because these trunks may be only one of several connected links, on some toll routes it may be necessary to provide better facilities of high grade in order to keep overall net circuit losses within reasonable limits and to provide satisfactory message transmission.]

Section 19. [22.] Provisions for Testing. Each telephone utility shall provide test facilities [which will enable it] to determine the operating and transmission capabilities of circuit and switching equipment[, either for routine maintenance or for fault location].

Section 20. [23.] Selective Ringing. Each telephone utility shall provide full selective ringing to all subscribers.

Section 21. [24.] Traffic Rules. (1) Suitable practices shall be adopted by each telephone utility that furnishes operator services concerning [the] operating methods to be employed by operators with the objective of providing efficient and agreeable service to [the] customers. The utility shall

[(2) Telephone operators shall be instructed to be courteous, considerate and efficient in the handling of all calls, and to] comply with [the] provisions of the Communications Act of 1934 in maintaining [the] secrecy of communications.

[(3) All operator-handled calls shall be carefully supervised and disconnects made promptly.]

(2) [(4)] When a utility [an operator] is notified by a customer that he has reached a wrong number on a [direct dialed] call provided by that utility, the customer shall be given credit on his bill when the claim has been substantiated.

Section 22. [25.] Answering Time. (1) Utilities that furnish operator services shall provide adequate personnel for operator assisted calls and operator number identification (ONI) to meet the service objective so that the average speed of answering time shall not exceed eight (8) seconds. [Adequate forces shall be provided for toll and for operator assistance calls to meet the service objective so that ninety (90) percent of the calls will be answered within ten (10) seconds.]

(2) The service objective for calls to the utility's repair service shall be an average speed of answering time no greater than twenty (20) seconds. [business office, and repair service shall be ninety (90) percent within twenty (20) seconds.]

[(3) The service objective for operator number identification (ONI) on toll calls where ONI is not available shall be ninety (90) percent within five (5) seconds.]

[(4) The utility shall use sufficient quantities of measuring devices to accurately monitor the above service indices.]

Section 23. [26.] Maintenance of Plant and Equipment. [(1)] Each telephone utility shall have a written [adopt and pursue a] preventative maintenance program aimed at achieving efficient operation of its system [so as] to [permit the] render[ing of] safe, adequate and continuous service at all times. The written program shall include a plan depicting the types and frequency of preventive maintenance performed on outside plant, central office equipment, vehicles and buildings.

[(2) Maintenance shall include keeping all plant and equipment in good state of repair consistent with safety and adequate service performance. Broken, damaged or deteriorated parts which are no longer serviceable shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted as necessary when found by preventive maintenance not to be in operating condition. Electrical faults, such as leakage or poor insulation, noise induction, crosstalk, or poor transmission characteristics, shall be corrected to the extent practicable within the design capability of the plant affected.]

[(3)] The utility shall maintain records descriptive of its preventative maintenance program indicating both [work] accomplished and planned work, [which is] carried out on a routine periodic basis[, for the various categories of equipment and plant].

[(4) Work performed in response to trouble is not considered preventative maintenance.]

Section 24. [27.] Emergency Operations. (1) Each telephone utility shall have a written plan [make reasonable provisions] to meet service emergencies resulting from failures of [lighting or] power service, sudden and prolonged increase in traffic, [illness of operators, or from] fire, storm, or acts of God. [, and] Each telephone utility shall train [inform] employees in [as to] procedure to be followed in an [the event of] emergency [in order to prevent or mitigate interruption or impairment of telephone service].

(2) [It is essential that] All central offices and toll centers shall [have] adequately provide [provision] for emergency power. Each central and/or toll office shall have a minimum of four (4) hours of battery reserve. In exchanges exceeding 5,000 lines and in toll offices, a permanent auxiliary power unit shall be installed. In offices without installed emergency power facilities there shall be a mobile power unit available of suitable capacity which can be delivered and connected within two (2) hours, or one-half (1/2) the battery reserve time, whichever is greater.

Section 25. [28.] Service Interruption. (1) Each utility shall have arrangements [telephone utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service with the shortest possible delay, regardless of weekends or holidays.

(2) Arrangements shall be made] to receive customer trouble reports twenty-four (24) hours per day [daily] and to clear trouble as quickly as possible [of an emergency nature at night, as

well as] during regular working hours, consistent with the bona fide needs of the customer and personal safety of utility personnel.

(2) [(3)] Each telephone utility shall maintain an accurate record of trouble reports made by its customers. This record shall include appropriate customer identification; [of the customer, of] service affected; [, the] time, date and nature of [the] report; [, the] action taken to clear trouble or satisfy [the] complaint; [,] and [the] date and time of trouble clearance or other disposition. This record shall be available to the commission or its authorized representatives upon request, and shall be retained for at least [a minimum time of] one (1) year.

(3) [(4)] The service objective shall be to clear eighty-five (85) [ninety-five (95)] percent of out-of-service troubles[, not requiring unusual repair such as cable failures,] within twenty-four (24) hours of the report received by the utility, unless the customer specifically requests a later time.

[(5) Nonout-of-service maintenance items reported by customers such as frayed cords, etc., not affecting the utilization of the telephone equipment may be scheduled for correction within a reasonable time so as to achieve economies in the dispatching of service personnel.]

[(6) All commitments to customers shall be kept, unless customers are timely notified of unavoidable delays. If unusual repairs are required, or other factors preclude clearing of reported trouble promptly, reasonable efforts shall be made to notify affected customers.]

(4) [(7) It shall be] The service objective of the utility shall be to [so] maintain [the] service so that the average rate of customer trouble reports in an exchange is no greater than eight (8) per 100 access lines [telephones] per month.

(5) [(8)] When a customer's access line [telephone] is reported [or found] to be out of order and [. It shall be restored to service as promptly as possible, but in the event it] remains out of order in excess of twenty-four (24) consecutive hours, [after the utility has notice thereof,] the utility shall refund to the customer upon request the pro rata part of that month's charges for the period of days during which the telephone was out of order. This refund may be accomplished by a credit on a subsequent bill for telephone service.

Section 26. [29.] Construction Work near Utility Facilities. [Even though all contractors working in the vicinity of utility lines or structures are responsible for exercising due diligence in preventing damage to utility property or interruption to utility services,] Telephone utilities shall, when requested, furnish to contractors appropriate information concerning location of underground conduit, cable, and other equipment in order to prevent any interruption of service to telephone customers. Nothing in this regulation [rule] is intended to affect the responsibility, liability or legal rights of any party under applicable laws or statutes.

Section 27. [30.] Customer Service. A customer may be required to take service of a different type or insufficient quantity if the use of service interferes unreasonably with [the] necessary service of other customers.

Section 28. [31.] Deviations from Rules. In special cases for good cause shown [upon application to and approval by,] the commission may permit deviations from these rules.

GEORGE EDWARD OVERBEY, JR., Chairman
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 15, 1989 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 10 a.m. at the Public Service Commission's office, Hearing Room No. 2, 677 Commanche Trail, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Claude G. Rhorer, Jr., Acting Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Claude G. Rhorer, Jr.

(1) Type and number of entities affected: This regulation affects in varying degrees all types and forms of telephone utilities under the jurisdiction of the commission.

(a) Direct and indirect costs or savings to those affected: Amendments reflect changes necessary due to technological advances, clarifications, corrections and compliance with new drafting rules. Exceptions are Sections 4(4), 5(7), 15(2) and (3), 18(3), 21(1), 22(1) and (2), and 24(1) which relax operating standards for telephone utilities because of technology changes and deregulation of the industry.

1. First year: There is no discernible fiscal impact since the utilities have implemented technology changes already. The regulation as amended will conform to current industry practice.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Section 3(22): Less restrictive efficiency standards for telephonic relay service will permit utilities more flexibility in meeting daily operations. Section 4(4): Summary performance records will provide better overall monitoring of utility service. Section 8(2): Extension provisions are revised to reflect current practice and provide less restrictive customer service. Section 15(2-3): Dial service requirements are revised to reflect technological improvements. Sections 16, 17, 18:

Grounded circuit language is revised to reflect currently accepted engineering standards. Section 22: Time standards are revised to reflect current practice. Section 25(3): Less restrictive service objectives will permit utilities greater flexibility in dealing with complaint and emergency situations.

(b) Reporting and paperwork requirements: The only change in reporting or paperwork requirements is the requirement that utilities have a written plan setting forth procedures for employees in the event of emergencies. This will allow continuity of service and facilitate reestablishing telephone service as expeditiously as possible. Preparation of a plan would necessitate expenditures by the utility, but any increase in costs is recoverable through rates.

(2) Effects on the promulgating administrative body: There will be no effects on the agency since monitoring compliance with the regulation will not be changed.

(a) Direct and indirect costs or savings: There will be no fiscal impact on the agency.

1. First year: No fiscal impact the first year.

2. Continuing costs or savings: There is no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are none.

(b) Reporting and paperwork requirements: There are none that affect the agency.

(3) Assessment of anticipated effect on state and local revenues: There is no impact on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Majority of language changes are editorial in nature or for the purpose of clarification. Any changes regarding requirements and service standards have been made with the input of those affected and reflect practices generally accepted in the industry.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These changes do not conflict with current laws and regulations.

(a) Necessity of proposed regulation if in conflict: No conflict.

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

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

TIERING: Was tiering applied? No. Tiering was not necessary. This is not a new regulation, and most changes were editorial in nature.

PUBLIC PROTECTION & REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:019. Disciplinary measures.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the disciplinary powers of the stewards and commission.

Section 1. Disciplinary Measures by Stewards. Upon the finding of a violation of these regulations [rules], or an attempted violation, on association grounds during the conduct of a meeting at which the stewards have been appointed to serve, the stewards may:

(1) Declare ineligible for racing or disqualify in a race any thoroughbred or licensed person;

(2) Suspend the license of any person involved in such regulation [rule] violation for any length of time deemed appropriate by the stewards as in keeping with the seriousness of the regulation violation;

(3) Cause any person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of, the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of thoroughbred racing, to be excluded or ejected from association grounds or any portion of association grounds; and

(4) In the case of a license suspension, the stewards may fix in the alternative a forfeiture not to exceed $1,000, which sum the licensee may, if he so chooses, pay to the commission in lieu of such imposed license suspension.

Section 2. Disciplinary Measures by Commission. Upon the finding of a violation of these regulations [rules], or an attempted violation, on any association grounds during the conduct of a race meeting in the Commonwealth, the commission may:

(1) Declare ineligible for racing or disqualify in a race any thoroughbred or licensed person;

(2) Deny, suspend, revoke, or declare void any license applied for or issued by the commission. For violations of regulations as a result of drug or alcohol abuse, the commission may in lieu of the aforementioned disciplinary actions, allow the licensee to keep his license on a probationary basis. The commission may require the licensee to enroll in a commission approved treatment program and may require proof that the licensee has avoided drugs and alcohol before returning him to a position of good standing. Each case shall be on a case-by-case basis at the discretion of the commission. During any probationary period, the licensee may have the privileges of his license restricted pursuant to the order of the commission. Failure of the licensee to comply with the order of the commission may result in further disciplinary action;

(3) Cause any person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of, the orderly conduct of a race or race meeting or any person whose presence is found by the commission to be inconsistent with maintaining the honesty and integrity of the sport of thoroughbred racing, to be excluded or ejected from all association grounds or any portion of any association grounds for any length of time the commission may deem the presence of such person remains inconsistent with maintaining the honesty and integrity of the sport of thoroughbred racing in the Commonwealth;

(4) Upon appeal and hearing de novo of a matter determined by the stewards, the commission may reverse or revise such stewards' ruling in all respects; except as to findings of fact by the stewards as occurred during an

incident to the running of a race and as to the extent of disqualification fixed by the stewards for a foul in a race; and

(5) In lieu of a license suspension or revocation, the commission may fix in the alternative a forfeiture in any amount, which sum the licensee may, if he so chooses, pay to the commission in lieu of an imposed license suspension or revocation. Such forfeitures paid to the commission shall in no event in any way accrue to the personal benefit of any commissioner or stewards.

LYLE G. ROBEY, Chairman

APPROVED BY AGENCY: November 30, 1989

FILED WITH LRC: December 12, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on January 25, 1990 at 10 a.m. at the offices of the Kentucky State Racing Commission at Kentucky Horse Park, 4063 Iron Works Pike, Lexington, Kentucky 40511. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky State Racing Commission, P.O. Box 1080, Lexington, Kentucky 40588.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael A. Fulkerson

(1) Type and number of entities affected: Perhaps as many as 10 licensees per year.

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

1. First year: Would potentially allow a person to remain employed.

2. Continuing costs or savings: Same as above.

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

(b) Reporting and paperwork requirements: There are none.

(2) Effects on the promulgating administrative body: Minor paperwork.

(a) Direct and indirect costs or savings:

1. First year: Too small to be measured.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: There are none.

(b) Reporting and paperwork requirements: Minor paperwork required.

(3) Assessment of anticipated effect on state and local revenues: There are small benefits to be expected in state and local revenues if someone is allowed to keep working.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This method is flexible enough to be tailored to any situation.

(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: N/A

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering is not applicable in this situation.

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Building Codes Enforcement
(Proposed Amendment)

815 KAR 7:020. Building code.

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This regulation establishes the Kentucky Building Code basic provisions relating to new construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation and electrical systems. This amendment clarifies the intent of <u>frost depth when erecting permanent building supports by specifying a minimum depth.</u> [statewide uniformity in enforcement of ventilation requirements for basements which are not designed or intended to be used as living spaces, e.g., utility rooms, storage; and updates the electrical standards by listing the newest edition of the National Electrical Code.]

Section 1. Definitions. As used in this regulation unless otherwise provided, the following definitions shall be used:

(1) "Basement": As defined by KRS 198B.010(3).

(2) "Building": As defined by KRS 198B.010(4).

(3) "Construction": As defined by KRS 198B.010(12).

(4) "Equipment": As defined by KRS 198B.010(15).

(5) "Reconstruction: The process of reproducing by new construction the exact form and detail of a vanished building, structure or object or part thereof as it appeared at a specific period of time."

(6) "Rehabilitation: The process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use of while preserving those portions or features of the property which are significant to historical, architectural and cultural values."

(7) "Restoration: The process of accurately recovering the form and details of the property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work."

(8) "Stabilization: The process of applying measures designed to reestablish a weather-resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists."

(9) "Story": As defined by KRS 198B.010(22).

Section 2. The Kentucky Building Code shall include the National Electrical Code, 1990 Edition, N.F.P.A. #70, which is hereby adopted by reference, published by and copies available from the National Fire Protection Association,

Batterymarch Park, Quincy, Massachusetts 02269. Copies are also available to be inspected 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. The Kentucky Building Code shall include the "BOCA National Building Code/1987," Tenth Edition, published by and copies available from Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477. Copies of the Kentucky Building Code are also available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, Monday through Friday between 8 a.m. and 4:30 p.m. That code, including all standards listed in Appendices A through D is hereby adopted by reference on June 18, 1987, with the additions, exceptions and deletions set forth in this regulation, including the following amendments:

(1) Delete Article 1 in its entirety. All requirements for the administration and enforcement of this regulation are set forth in 815 KAR 7:010 with fees established by 815 KAR 7:013.

(2) Amend subsection 309.5 to read as follows: "309.5 Use group R-4 Structures: This use group shall include all detached one (1) or two (2) family dwellings not more than than three (3) stories in height, and their accessory structures as indicated in the Appendix B Standard, One (1) and Two (2) family Dwelling Code. All such structures shall be designed and built in accordance with the requirements of this code for use group R-3 structures or shall be designed and built in accordance with all the requirements of the one (1) and two (2) family dwelling code as listed in Appendix B, except that the requirements of the state plumbing code (Article 28) shall supersede those conflicting requirements of the one (1) and two (2) family dwelling code. This choice shall be made by the builder at the time of plans submission. Nevertheless, any builder may use exception #3 of Section 809.4 to determine minimum size of egress windows."

(3) Amend subsection 505.1 to read as follows: "505.1 Alteration Limitations: These provisions shall not be deemed to prohibit alterations within the limitations of Sections 106 and 505.2 provided an unlawful change of use is not involved."

(4) Delete Sections 512.1 through 512.4.1 and insert in lieu thereof the following: "512.1" Requirements for accessibility of the handicapped: Please see 815 KAR 7:060 for construction requirements providing accessibility to the handicapped, Article 33 of this Code.

(5) Amend Article 32 as follows:

(a) Amend Section 3202.1 to read as follows: "The provisions in the following Section 3202.1.1 through 3202.1.5 shall apply to existing buildings that will continue to be, or are proposed to be, in Use Groups A, B, E, F, M, R and S. These provisions shall not apply to historic buildings as provided for in Section 102.5."

(b) Amend subsection 3202.1.5 to read as follows: "All portions of the buildings proposed for change in use shall conform to the provisions of Article 33 as required by Section 3302.1."

(6) Amend Section 600.8.2 by creating a new subsection to read as follows: "600.8.2 Housekeeping: Periodic inspections of existing uses and occupancies shall be made by the appropriate fire and health officials to insure maintenance of good housekeeping conditions."

(7) Amend Section 608.1 to read as follows: "Private garages located beneath rooms in buildings of Use Groups R-1, R-2, R-3 or I-1 shall have walls, partitions, floors and ceilings separating the garage space from the adjacent interior spaces constructed of not less than one (1) hour fire-resistance rating. Attached private garages shall be completely separated from the adjacent interior spaces and the attic area by means of one-half (1/2) inch gypsum board or equivalent applied to the garage side. The sills of all door openings between the garage and adjacent interior spaces shall be raised not less than four (4) inches (102 mm) above the garage floor. The door opening protectives shall be one and three-fourths (1 3/4) inch solid core wood doors or approved equivalent. In lieu of the required one and three quarter (1 3/4) or twenty (20) minute door, an approved automatic sprinkler head located directly above the door in the garage and properly connected to the domestic water system or an approved automatic detector located directly above the door in the garage shall be acceptable."

(8) Delete Section 702 and Section 804 in their entirety.

(9) Amend Article 11 as follows:

(a) Amend Section 1100.0 by creating a new subsection to read as follows: "1100.2 Certificate of Compliance: the provisions of this article and Article 12 may be deemed to have been satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building official."

(b) Amend subsection 1105.4 by changing "Section 103.3" to "Section 106.3".

(c) Amend subsection 1113.1.1, Additions, by adding an exception to read as follows: "Exception: in Zone 1, additions that increase the height of an existing building shall not be required to conform to the provisions of this subsection."

(10) Delete subsections 904.4.2, 904.4.3, 904.4.4 in their entirety; and amend subsection 904.4 to read as follows: "Interior hangings and decorations shall comply with Section 904.4.1."

(11) Amend subsection 2500.2 to read as follows: "2500.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(12) Add two (2) new subsections to Section 2500.0 to read as follows:

(a) "2500.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1983 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, American National Standards Institute, Inc./American Society of Mechanical Engineers (ANSI/ASME) BPV-VIII-1."

(b) "2500.4 Mechanical Code: All mechanical equipment and systems not covered by 2500.2 or 2500.3 but which are required by other provisions of this code to be installed in

accordance with the mechanical code listed in Appendix A, shall be constructed, installed and maintained in conformity with the BOCA Basic Mechanical Code/1987 including all applicable standards listed within Appendix A."

(13) Delete Article 29 in its entirety.

(14) Amend Article 27 by changing, creating or deleting certain portions thereof, as follows:

(a) Create a new subsection 2700.5 to read as follows: "2700.5 Electrical Inspections: Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with 815 KAR 35:015."

(b) Delete Subsections 2701.3, 2704.3, and 2704.4.

(c) In Subsections 2702.1, 2702.3 and 2703.1 delete the words "Building Official" and insert in lieu thereof the word "Certified Electrical Inspector."

(15) Delete subsections 2800.1 through 2807.1 in their entirety and insert in lieu thereof the following: "2800.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of Chapter 318 of the Kentucky Revised Statutes and the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations."

(16) Amend subsection 809.4 to read as follows:

"809.4 Emergency escape: Every sleeping room below the fourth story in buildings of Use Group R and I-1 shall have at least one (1) operable window or exterior door approved for emergency egress or rescue. The units shall be operable from the inside to a full clear opening without the use of separate tools. Where windows are provided as a means of egress or rescue, they shall have a sill height not more than forty-four (44) inches (1118 mm) above the floor. All egress or rescue windows from sleeping rooms shall have a minimum net clear opening of five and seven-tenths (5.7) square feet (0.532). The minimum net clear opening height dimension shall be twenty-four (24) inches (610 mm). The minimum net clear opening width dimension shall be twenty (20) inches (508 mm).

Bars, grilles or screens placed over emergency escape windows shall be releasable or removable from the inside without the use of a key, tool or excessive force."

EXCEPTIONS

1. Grade floor windows may have a minimum net clear opening of five (5) square feet (0.47 m2).

2. In buildings where the sleeping room is provided with a door to a corridor having access to two (2) remote exits in opposite directions, an outside window or an exterior door for emergency escape from such sleeping room shall not be required.

3. Buildings equipped throughout with a complete automatic fire suppression system.

4. Egress windows located on the first and second stories in multiple family dwellings (R-2 and R-3 use groups) and one (1) and two (2) family dwellings, may have a minimum net clear opening height dimension of twenty-two (22) inches and a minimum width dimension of twenty (20) inches; and the net clear opening area may be reduced to no less than four (4) square feet. The minimum total glazed area shall be five (5) square feet in the case of a ground floor window and not less than five and seven-tenths (5.7) square feet in the case of a second story window. (This exception applies only if the sash frames can be readily broken or removed.)

Section 4. Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance. The following subsections of Article 26 of the BOCA National Building Code, 1987 Edition are deleted or amended to read as follows:

(1) Amend Subsection 2603.4 of Article 26 to read as follows: "2603.4 Posting certificates of compliance: The owner or lessee shall post the last issued certificate of compliance in a conspicuous place on the elevator, available to the building official."

(2) Amend Subsection 2602.4.1 of Article 26 to read as follows: "2602.4.1 Periodic Inspection Intervals: Periodic inspections shall be made at intervals of not more than twelve (12) months for all passenger elevators, manlifts and escalators."

(3) Amend Subsection 2610.1 of Article 26 to read as follows: "2610.1 General: The construction of machine rooms and related construction for passenger and freight elevators and dumbwaiters shall be protected from the weather, and shall be enclosed with fire resistive enclosures. Enclosures and access doors thereto shall have a fire endurance at least equal to that required for the hoistway enclosure in Table 401."

(4) Create a new Section 2618.0, Wheelchair and Stairway Lifts, in Article 26 to read as follows: "2618.1 General. Except as herein provided, inclined stairway chairlifts and inclined and vertical wheelchair lifts shall conform to the requirements of ASME A17.1 listed in Appendix A. Exception: Vertical wheelchair lifts are permitted to have a travel distance not to exceed 23 feet and penetrate a floor subject to the following additional requirements.

1. The platform shall be fully enclosed on the top and any side which is not used as an exit or entrance. Enclosures shall conform to the requirements of ASME A17.1 listed in Appendix A.

2. The runway shall be fully enclosed from the floor to the ceiling on all floors conforming with the requirements of Section 2608.0.

3. All runway entrances shall be protected by a door of unperforated construction conforming to the requirements of Section 2611.0.

4. All runway entrance doors shall be equipped with approved interlocks conforming to the requirements of ASME A17.1 listed in Appendix A."

Section 5. Elevators. On page 485 of Appendix A of the BOCA National Building Code under "Elevators, Escalators and Moving Walks," delete the reference to A17.1-84 and the 1985 supplement and insert in its place "A17.1-1987 with the exception of rules 102.2(c)(4) and 700.4b, 700.5, 700.7b, 700.10b, 707.4."

Section 6. Amend Article 3 of the 1987 Edition of the BOCA National Building Code adding a new section to read as follows: "310.4 Tobacco auction warehouses: Warehouses, for the sale of tobacco only, of Type 1, Type 2, or Type 3 construction, may be constructed without a sprinkler system when all the following requirements have been met:

(1) The initial submission of plans to the Department of Housing, Buildings and Construction shall include a signed certificate

by the owner that the warehouse shall be used solely for the sale of tobacco on a seasonal basis or for the storage of noncombustibles.

(2) A manual fire alarm and smoke detection system with notification to the local fire service shall be provided with installation in accordance with Section 1017 of this code.

(3) An eighteen (18) foot paved and posted fire lane surrounding the entire perimeter of the building shall be provided and be accessible from a public street.

(4) A fifty (50) foot fire separation shall be maintained between the warehouse and the lot line and the warehouse and the nearest building."

Section 7. Amend the 1987 Edition of the BOCA National Building Code as follows:

(1) Amend Article 5 as follows:

(a) In subsection 505.1, change the number, "103.0," to read "106.0."

(b) In subsection 511.1, change the number, "124.0," to read "123.0."

(c) Delete subsection 513.1 in its entirety.

(2) Delete the reference to the BOCA Fire Prevention Code listed in Appendix A and insert in lieu thereof the following: "The Kentucky Fire Safety Standards (815 KAR 10:020 - Fire Safety Standards) shall be used as the fire prevention code."

(3) Amend Figure 1113.1 of Article 11 by adding the following list of 120 Kentucky counties showing the assigned earthquake risk zone for each. The risk zone assigned herein shall supersede any general area designations as shown upon the face of the map.

Earthquake Risk Zone #1

Adair	Elliott	Laurel	Oldham
Allen	Estill	Lawrence	Owen
Anderson	Fayette	Lee	Owsley
Barren	Fleming	Leslie	Pendleton
Bath	Floyd	Letcher	Perry
Bell	Franklin	Lewis	Pike
Boone	Gallatin	Lincoln	Powell
Bourbon	Garrard	Logan	Pulaski
Boyd	Grant	Madison	Robertson
Boyle	Grayson	Magoffin	Rockcastle
Bracken	Greene	Marion	Rowan
Breathitt	Greenup	Martin	Russell
Breckinridge	Hancock	Mason	Scott
Bullitt	Hardin	Meade	Shelby
Butler	Harlan	Menifee	Simpson
Campbell	Harrison	Mercer	Spencer
Carroll	Hart	Metcalfe	Taylor
Carter	Henry	Monroe	Todd
Casey	Jackson	Montgomery	Trimble
Christian	Jefferson	Morgan	Warren
Clark	Jessamine	Muhlenberg	Washington
Clay	Johnson	McCreary	Wayne
Clinton	Kenton	McLean	Whitley
Cumberland	Knott	Nelson	Wolfe
Daviess	Knox	Nicholas	Woodford
Edmonson	Larue	Ohio	

Earthquake Risk Zone #2

Caldwell
Calloway
Crittenden
Henderson
Hopkins
Lyon
Trigg
Union
Webster

Earthquake Risk Zone #3

Ballard
Carlisle
Fulton
Graves
Hickman
Livingston
Marshall
McCracken

(4) Amend subsection 2203.2.1.7 to read as follows: "Glazing in fixed panels having a glazed area in excess of nine (9) square feet (0.84 m^2) with the lowest edge less than eighteen (18) inches (457 mm) above the finish floor level or walking surface within thirty-six (36) inches (914 mm) of such glazing, and the finish floor or walking surface are extended on both sides of said glazing. In lieu of safety glazing, such glazed panels may be protected with a horizontal member not less than one and one-half (1 1/2) inches (38 mm) in width when located between twenty-four (24) inches (610 mm) and thirty-six (36) inches (914 mm) above the walking surface."

(5) Amend section 2203 by adding a new subsection 2203.3 which shall read as follows:

(a) "2203.3 Labeling requirements:

1. Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in such a location within the Commonwealth of Kentucky shall be permanently labeled by such means as etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of American National Standards Institute, Inc. (ANSI) Standard Z-97.1 and Z-97.1a listed in Appendix A and such further requirements as may be adopted by the Department of Housing, Buildings and Construction. The label shall be legible and visible after installation. Safety glazing labeling shall not be used on materials other than safety glazing materials."

(6) Amend subsection 915.4 and the exceptions thereto to read as follows: "915.4 Duct and pipe shafts: In all buildings other than buildings of Use Group R-2, vertical pipes arranged in groups of two (2) or more which penetrate two (2) or more floors and occupy an area of more than one (1) square foot (0.093 m^2), and vertical ducts which penetrate two (2) or more floors, shall be enclosed by construction of not less than one (1) hour fire-resistance rating to comply with this section. All combustible ducts connecting two (2) or more stories shall be enclosed as indicated herein.

Exceptions:

1. In all buildings of Use Group R-2, vertical noncombustible ducts shall not be required to have a one (1) hour enclosure provided:

(a) the cross sectional area does not exceed thirty-five (35) square inches;

(b) the duct does not penetrate more than three (3) floors;

(c) the duct serves no more than one (1) dwelling unit and shall not join other ducts except above the top level for the purpose of utilizing a single roof penetration; and

(d) these ducts are restricted for use as a bathroom or kitchen exhaust, and combustion air supply and relief.

(7) Add the following language and National Fire Protection Association (NFPA) Standards to Appendix A on page 496:

"These National Fire Protection Association (NFPA) Standards shall be used for fire suppression requirements and design only, where referenced in a specific code requirement in the body of the Code."

BOCA Guide for Suppression Requirements for Specific Occupations

Installation of Sprinkler Systems	NFPA 13-87
Standard for Installation for Private Fire Service Mains and their Appurtenances	NFPA 24-1984
Aircraft Hangars	NFPA 409
Pyroxylin Plastics	NFPA 40C
Flammable Liquids	NFPA 36
Laboratories	NFPA 45
Fireworks	NFPA 44A
Gaseous Oxidizing Materials	NFPA 43C
L.P. Gas Storage	NFPA 58
Local Protective Signaling Systems	NFPA 72A-87
High Piled Storage in Excess of 12 ft. in height	NFPA 231
Rubber Tire Storage	NFPA 231D
Baled Cotton Storage	NFPA 231E
Rolled Paper Storage	NFPA 231F
Rangehoods	NFPA 96
Computer Rooms	NFPA 75
Archives and Record Centers	NFPA 232AM
L.P. Gas Storage and Handling	NFPA 59A
Explosion Prevention Systems	NFPA 69
Fur Storage	NFPA 81
Cooling Towers	NFPA 214
Marinas and Boatyards	NFPA 303
Library Stacks	NFPA 910

(8) Amend Article 30 as follows:
In subsection 3005.2, delete the words, "Section 2805.4 through 2805.4.3" and insert in lieu thereof "Article 28, 815 KAR 20:090."
(9) Delete Article 28 in its entirety and insert in lieu thereof the following reference: "2800.1 General: See Kentucky State Plumbing Code for all the requirements for plumbing installations as set forth in Chapter 20, Title 815 of Kentucky Administrative Regulations. Informational copies are available from the Kentucky Division of Plumbing, U.S. 127 South, Frankfort, Kentucky 40601."

Section 8. Amend section 812 of the 1987 Edition of the BOCA National Building Code.
(1) Amend the first sentence of subsection 812.4.2 to read as follows: All doors equipped with latching or locking devices in buildings of Use Groups A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater than 100 shall be equipped with approved panic hardware."
(2) Create an exception to subsection 812.4.2 to read as follows: "Exception: Panic hardware for Use Group A3 shall not be required for principal entrance/exit doors if (1) they are free-swinging; and (2) the calculated occupant load does not exceed 150; and (3) the latch/lock device is a thumb latch/lock or a key operated lock device in which the key cannot be removed from the side from which egress is to be made when it is locked."

Section 9. Amend Section 1016.1 to read as follows: "1016.1 Fire hydrants: Fire hydrants installed on private property as a part of a private fire protection system shall be located so as to meet the requirements of NFPA 24. Yard hydrant installation shall be coordinated with the responsible fire officials who shall not make recommendations which exceed the requirements of NFPA 24. Hydrants not addressed by NFPA 24 shall conform to the standards of the administrative authority of the jurisdiction and the fire department. Hydrants shall not be installed on a water main less than six (6) inches in diameter."

Section 10. Amend Article 9 of the 1987 Edition of the BOCA National Building Code by creating certain portions thereof to read as follows:
(1) Create a new subsection 905.4 to read as follows: "905.4 Combustible Pipe: Combustible Pipe shall be permitted in all use groups and construction types where approved by Article 28 of this Code and the Kentucky State Plumbing Code."
(2) Create a new subsection 905.4.1 to read as follows: "905.4.1 Vertical Combustible Pipes: Vertical Combustible Pipes shall comply with Sections 905.4.2 and 915.4."
(3) Create a new subsection 905.4.2 to read as follows: "905.4.2 Combustible Pipe Penetrations: Combustible pipe penetrations of fire-resistance rated assemblies shall be acceptable when installed in accordance with an approved tested assembly utilizing combustible pipe penetrations. If there is no approved tested assembly with combustible pipe penetrations, noncombustible fittings shall be required where combustible pipe penetrations enter into or exit from the fire-resistance rated assembly."

Section 11. Create a new Section 2511 of the 1987 BOCA National Building Code entitled "Rangehoods" to read as follows: "2511 Rangehoods. Rangehoods in kitchen exhaust systems shall comply with the requirements of the Mechanical Code listed in Appendix A. The bottom edge of the hood shall be located at a height of not more than four feet (4') above the cooking surface."

Section 12. Amend subsection 625.1 of the 1987 Edition of the BOCA National Building Code by adding a sentence to read as follows: "625.1.1 The Cabinet for Human Resources, Department for Health Services shall regulate the design and construction of new facilities as related to water distribution and treatment systems for public swimming pools and the proper operation and maintenance of all such facilities. See 902 KAR 10:120, Kentucky Public Swimming and Bathing Facilities Regulation."

Section 13. Amend Appendix A, page 492 of the 1987 BOCA National Building Code under Council of American Building Officials (CABO) by adding a reference to CABO-1987 Supplement and amend page 496 by changing the NEC reference to the 1990 Edition.

Section 14. Amend the 1987 Edition of the BOCA National Building Code, Section 1012.2.9, Use Group S, by adding an Exception to read as follows: "Use Group S: In all buildings or structures or portions thereof of Use Group S, other than public garages which shall conform to Section 1012.2.11, when:
(1) Three (3) or more stories in height, of Use Group S-1, and more than 3,000 square feet (279 m^2) in area per floor; or
(2) Three (3) or more stories in height, of Use Group S-2, and more than 10,000 square feet (930 m^2) in area per floor; or
(3) Four (4) or more stories in height of Use

Group S-1 or S-2 regardless of the area per floor.

EXCEPTION: For open parking structures, the required standpipe may be a dry standpipe system without making a connection to the permanent water supply."

Section 15. Amend Table 806 of Article 8 of the 1987 Edition of the BOCA National Building Code by adding an Exception to Industrial Areas to read as follows: "Exception: For purposes of determining jurisdiction under Sections 108 and 109, design professional seal requirements, and Article 33 coverage, use 200 gross."

Section 16. Amend subsection 304.1 of the 1987 Edition of the BOCA National Building Code to read as follows: "304.1 General: All buildings and structures, or parts thereof, other than those used for business training or vocational training, shall be classified in Use Group E which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities. Educational type uses with a total occupant load less than fifty (50) shall be classified as Use Group B. School buildings, or parts thereof, for business training or vocational training shall be classified in the same use group as the business or vocation taught."

Section 17. Amend various sections of the 1987 BOCA National Building Code dealing with apartment buildings and single family dwellings by creating certain exceptions, as follows:

(1) Create an exception to Section 708.1.3 to read, "Exception: Use Group R-3 basement recreation rooms, a furred ceiling height of six feet and eight inches (6'8") around the ducts may be made in the soffit area only for structural beams and mechanicals. The above two-thirds (2/3) area requirements must still be met."

(2) Create an exception to Section 828.2.2 to read, "Exception: Handrails within individual dwelling units shall not be less than thirty (30) inches nor more than thirty-four (34) inches, measured vertically, above the nosing of the treads or above the finished floor."

Section 18. Amend Subsection 2102.1, General, of the 1987 Edition of the BOCA National Building Code by adding an Exception to read as follows: "Exception: Plans showing compliance with Subsection 2102.1 through 2102.10.3 shall be submitted to the Kentucky Division of Water pursuant to KRS 151.250 and 260. Approval of plans by or through that agency together with their final approval of construction shall constitute compliance with these sections."

Section 19. Amend Article 2, Section 201 of the 1987 Edition of the BOCA National Building Code by adding a notation to the definition of "building" which reads as follows: "For application of this code, each portion of a building completely separated from other portions by fire walls complying with Section 908.0 shall be considered as a separate building for the determination of height and area limitations of buildings contained in Table 501."

Section 20. Amend Subsection 709.3, Alternative mechanical ventilation, of the 1987 Edition of the BOCA National Building Code to read as follows: "Enclosed attic, rafter and crawl spaces and other uninhabited spaces such as unfinished basements, which are not ventilated as herein required, shall be equipped with a mechanical ventilation system conforming to the requirements of Section M-1605 of the mechanical code listed in Appendix A."

Section 21. Amend Subsection 1205.1, Frost Protection, of the 1987 Edition of the BOCA National Building Code to read as follows: "Except when erected upon solid rock or otherwise protected from frost, foundation walls, piers and other permanent supports of all buildings and structures larger than 100 square feet (9.30 m^2) in area or ten (10) feet (3048 mm) in height shall extend below the frost line of the locality, to a minimum depth of twenty-four (24) inches, or whichever is deeper, and spread footings of adequate size shall be provided when necessary to properly distribute the load within the allowable bearing value of the soil. Or, such structures shall be supported on piles or ranging timbers when solid earth to rock is not available. Footings shall not be founded on frozen soils unless such frozen condition is of a permanent character."

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: October 19, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1990 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 January 18, 1990, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Contractors, architects, engineers, users of Kentucky Building Code.

(a) Direct and indirect costs or savings to those affected: No costs or savings because regulation only establishes acceptability and sets standards.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): No competition; KBC is statewide code.

(b) Reporting and paperwork requirements: None other than filing of administrative regulation.

(2) Effects on the promulgating administrative body: None to the agency because the regulation

merely provides accepted standards in construction.

(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: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

(3) Assessment of anticipated effect on state and local revenues: No effect on revenue either state or local.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method of construction was rejected. Board of Housing reviews amendments and passes as acceptable, safe addition 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:

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. This amendment will affect a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This amended regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the KBC.

4. How does this administrative regulation affect the local government or any service it provides? There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this amendment.

PUBLIC PROTECTION AND REGULATION CABINET
Commission on Fire Protection
Personnel Standards and Education
(Proposed Amendment)

815 KAR 45:015. Aid to fire departments.

RELATES TO: KRS 17.210, 136.392

STATUTORY AUTHORITY: KRS 17.250

NECESSITY AND FUNCTION: KRS 17.250 requires the State Fire Marshal to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment. This proposed regulation sets out standards and procedures for determining the amount or use of volunteer fire department aid.

Section 1. Definitions. (1) Certified firefighter. For the purpose of these regulations shall be one who has received at least 150 hours of certified fire training as recognized by the Commission on Fire Protection Personnel Standards and Education and receives at least twenty (20) hours certified training annually thereafter.

(2) Certified training. For the purpose of these regulations means firefighter training given or verified by a certified instructor and approved and recorded by the commission.

(3) Commission. For the purpose of these regulations means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.

(4) Fire apparatus. For the purpose of these regulations means a motorized vehicle specifically designed to perform firefighting operations. [an operational truck type vehicle,] equipped with a pump having a minimum [of sufficient] capacity of pumping 250 gallons per minute [to fight fires] and with sufficient space to carry hose and other fire suppression [fighting] equipment.

(5) Full-time paid firefighter. For the purpose of these regulations means an individual[s] who works for a minimum salary [a minimum] of $8,000 annually and works a minimum of 2,080 hours per year as an employee of a fire department or fire protection district that is recognized by the State Fire Marshal's Office.

(6) Volunteer fire department. For the purpose of these regulations means a fire department recognized by the State Fire Marshal's Office which has a membership consisting of less than fifty (50) percent of its members being full-time paid firefighters and the remaining number being volunteer firefighters.

(7) Newly formed department. For the purpose of these regulations means a department which has organized to the point of having at least twelve (12) members and a chief, having either in their possession or on order an operational fire apparatus. They shall also have funds, equipment, land and buildings of such sufficient value made available to the newly formed fire unit from any source whatever for the year in which the allotment is to be made to match or exceed the amount of the aid allotment.

Section 2. Eligibility. (1) The State Fire Marshal shall allot on an annual basis (August 1 through September 30) an equal share of the funds accruing to and appropriated for volunteer fire department aid to all eligible departments.

(2) To qualify to receive aid under the Volunteer Fire Department Aid Law, volunteer fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized volunteer fire departments operated and maintained on a nonprofit basis in the interest of the health, safety, prosperity and security of the inhabitants of the Commonwealth must maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus.

(3) Any fire department or entity eligible for and receiving funding pursuant to these regulations shall have a minimum of fifty (50) percent of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

(4) Each fire department shall furnish the Office of State Fire Marshal an update list of active firefighting members of the fire department by the 31st of July each year so that the fifty (50) percent certification requirement can be checked.

(5) To be eligible to receive funds, a newly formed fire department must have at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus or one (1) on order. They must have fifty (50) percent of their membership with at least one-half (1/2) of their training hours toward certification by July 31 within their first year of existence and plans to receive the balance of the required hours for certification within the second year of their existence. Each year thereafter, they shall meet the requirements of the commission to retain certification.

[(6) New members on the active list of an established department receiving funds will not count in the fifty (50) percent requirement set forth in subsection (3) of this section. These new members must receive one-half (1/2) (i.e., seventy-five (75) hours) of their training towards certification within their first year of membership and the balance within the second year. Each year thereafter, the established department and all members shall meet all the requirements of the commission to retain certification.]

Section 3. Participation Requirement. (1) It shall be the responsibility of the Chief Officer or his appointed representative of each department to furnish any information required by the Fire Department Aid Coordinator for determination of eligibility.

(2) Any volunteer fire department seeking aid pursuant to the authority of KRS 17.250 shall file an application on blanks which may be obtained from the Office of the State Fire Marshal.

(3) Such applications shall be executed in duplicate, one (1) copy to be retained by the applicant and the original to be forwarded to the State Fire Marshal.

Section 4. Verification and Inspection. (1) The application for aid shall contain or have attached thereto a detailed statement of the equipment to be purchased, repairs to be made, or other purposes for which the allotment is to be expended and such other information as the State Fire Marshal may require to give proper consideration to the request.

(2) Where a new department is being established, there shall be furnished with the application additional information as to the territory to be served and plans and specifications for the establishment of the department.

(3) The Fire Department Aid Coordinator shall, upon receipt of the application, advise the State Fire Marshal as to the validity of the qualifications and approval for grant-in-aid.

(4) The State Fire Marshal or the Fire Department Aid Coordinator or their representative may make an inspection of the applicant's department to determine comparative needs within the department before allotment is made.

Section 5. Processing Applications for and Expenditure of Aid. (1) No allotment may be expended for any purpose other than that for which it is approved without the approval of the Fire Department Aid Coordinator.

(2) If approved allotment is insufficient to cover cost of equipment or other approved purpose, funds granted for any fiscal year may be deposited in any bank legally authorized by applicant, to be held for a period not to exceed five (5) years from the initial request. If additional time beyond the five (5) years is needed, a written request shall be made to the Fire Department Aid Coordinator giving reasons why additional time is needed. This shall be held in a special and separate bank account marked Fire Department Aid.

(3) If an allotment is granted to a department and is not to be used for purchase of equipment for which it was granted, the chief of the department shall:

(a) Contact the Fire Department Coordinator directly giving reason why he wishes to make a change in the original equipment list;

(b) Resubmit a new equipment list which is to be approved by the State Fire Marshal; or

(c) Refund the grant-in-aid allotment.

(4) Amounts expended for expenses of firemen in attending fire related school or classes shall not exceed $200 for any one (1) department. This shall be an item entered on your regular equipment list.

(5) When expenditure is made of any allotted funds, copies of receipted bills shall be forwarded (by the 31st of December of the current fiscal year) to the Fire Department Aid Coordinator and after his approval shall be forwarded to the State Fire Marshal. If grant is to be used toward the retirement of a preexisting debt for purchase of land, buildings or equipment, proof of such expenditure in the form of affidavit or cancelled note shall be furnished the State Fire Marshal. Any false statements made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on Monday, January 22, 1990, 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: Grant Winston, Office of Attorney General, Capitol Building, Frankfort, Kentucky 40601-3494. If no written requests to appear at the public hearing are received by January 17, 1990, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Grant Winston

NOTE: Because these amendments are made at the

request of the Interim Committee on Cities and there are no substantive changes, the answer to the questions below 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? Yes

PUBLIC PROTECTION AND REGULATION CABINET
Commission on Fire Protection
Personnel Standards and Education
(Proposed Amendment)

815 KAR 45:020. Commission meetings and proceedings.

RELATES TO: KRS 95A.040, 95A.050(1)

STATUTORY AUTHORITY: KRS 95A.050(1), (3)

NECESSITY AND FUNCTION: This regulation sets forth definitions to be used in this chapter as well as rules and procedures governing the manner and form of meetings and proceedings initiated and conducted by the commission.

Section 1. Definitions. As used in this chapter unless the context requires otherwise: (1) "Commission" means the Commission on Fire Protection Personnel Standards and Education.

(2) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(3) "Department" means the Department of Housing, Buildings and Construction.

(4) "Division" means the Division of Fire Prevention, State Fire Marshal's Office.

(5) "Fire department" means and includes a fire department organized under KRS Chapter 75, a fire protection district, a volunteer fire department, or a municipal, county or urban-government fire department.

(6) "Fire protection personnel" means and includes, but is not limited to, any employee of a "fire department" as defined in subsection (5) above, whether paid or unpaid, who is engaged in: fire prevention; inspecting buildings for compliance with building, fire, energy and life-safety codes and the Architectural Barriers Act; fire suppression; fire and arson investigation; fire-related emergency medical and rescue work; and other allied fields.

(7) "Fire protection instructor" or "fire service training officer" means any person certified, pursuant to KRS 95A.040(2)(b) as qualified to instruct fire protection personnel.

Section 2. [Meetings, Procedures, Powers. (1) Organizational meetings; election of officials; ex officio members. The commission shall elect a chairman, vice chairman and secretary from among the appointed members at its first meeting and thereafter from succeeding new appointments, to fill regular terms for such periods as it may determine are proper. Five (5) members shall constitute a quorum. The Governor shall summon the commission to its first meeting. The Superintendent of Public Instruction and the State Fire Marshal shall serve as ex officio members of the commission and they may delegate that function to an employee of their department.]

[(2) Meetings; how called. The commission may meet at such times and places in the State of Kentucky as it deems proper. Meetings shall be called by the chairman upon his own motion, or upon written request of five (5) members, and written notice thereof shall be given to all members not less than ten (10) days in advance.]

(1) [(3)] Voting on reports, recommendations, and contracts. Whenever the commission is requested, or decides, to recommend regulations to the commissioner pursuant to KRS 95A.050(3) to establish procedures for certification that training and education programs meet minimum standards pursuant to KRS 95A.040(2)(a); to enter into contracts with other agencies or persons pursuant to KRS 95A.040(2); to recommend to the commissioner regulations prescribing the qualifications and certification procedures for fire protection instructors pursuant to KRS 95A.040(2)(b); or to make studies, recommendations and reports to the Governor or legislature pursuant to KRS 95A.040(1), at least six (6) appointed members of the commission shall have cast affirmative votes for any such decision or action.

(2) [(4)] Public meetings. It shall be the policy of the commission that all its proceedings shall be open to the public and to the press and other news media representatives, unless forbidden by law. This policy likewise governs the proceedings of any subcommittee of the commission.

(3) [(5)] Parliamentary rules. The commission shall adopt from time to time such rules for the orderly conduct of commission or subcommittee meetings as they may deem proper.

(4) [(6)] Complaints; advisory opinions. At any regular meeting, the commission may receive complaints, render decisions, deliver advisory opinions, or authorize or request studies and reports by personnel in the State Fire Marshal's Office for any of the purposes set forth in KRS 95A.040, 95A.050, and any regulation adopted thereunder.

(5) [(7)] Subcommittees. The commission may establish and govern such subcommittees of its members as it may deem advisable or desirable for the orderly conduct of its business.

Section 3. Administrative Support for Commission. (1) Staff services. Personnel of the division shall provide administrative and

technical services to the commission as the commissioner deems necessary or desirable, upon the request of the commission.

(2) Training services. The commission may contract with the Department for Occupational Education to develop curricula and training delivery plans, in conjunction with that department's advisory committee, for the entire range of local fire department duties, technology and activities. In addition, the Department for Occupational Education may furnish school facilities in and among the vocational and technical schools under its jurisdiction for such training. The Department for Occupational Education may be awarded a sum from the commission's budgeted funds in order to pay the salary of a clerk to assist the Department for Occupational Education with maintenance of records and files and the performance of other clerical tasks associated with training of fire protection personnel and instructors and the certification of fire protection personnel, instructors and training programs.

(3) Codes enforcement. The commission may contract with the division to provide training to fire protection personnel in building, fire and life-safety codes enforcement, energy code enforcement, Architectural Barriers Act enforcement, and the legal and administrative aspects of fire safety and building inspections.

Section 4. Coordination among Agencies. Upon approval by the commission, the Department for Occupational Education may provide on-job field training and classroom training of instructors and fire protection personnel and may be reimbursed by the commission for such functions as may be permitted by law. Jefferson Community College, Northern Kentucky University, Eastern Kentucky University, and any other qualified person or agency, may provide faculty or educational services, lodging, meals or other administrative support for the training of instructors and fire protection personnel, and may be reimbursed therefore in accordance with a contract entered into by the commissioner pursuant to KRS 95A.050(2) and in furtherance of any purpose assigned by the law to the commissioner, the department, or the commission relating to the training or provision of technical assistance to fire protection personnel.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on Monday, January 22, 1990, 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: Grant Winston, Office of Attorney General, Capitol Building, Frankfort, Kentucky 40601-3494. If no written requests to appear at the public hearing are received by January 17, 1990, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Grant Winston
NOTE: Because these amendments are made at the request of the Interim Committee on Cities and there are no substantive changes, the answer to the questions below 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:
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(3) Assessment of anticipated effect on state and local revenues:
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(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

PUBLIC PROTECTION AND REGULATION CABINET
Commission on Fire Protection
Personnel Standards and Education
(Proposed Amendment)

815 KAR 45:035. Education incentive.

RELATES TO: KRS Chapter 95A
STATUTORY AUTHORITY: KRS 95A.240
NECESSITY AND FUNCTION: KRS 95A.240(1) authorizes the Commission on Fire Protection Personnel Standards and Education to issue such regulations as are necessary to properly administer the Professional Firefighters Foundation Program Fund. This regulation establishes the procedures and criteria which shall be utilized to determine the eligibility of local governments and individual firefighters to share in the fund.

Section 1. Definitions. As employed in the Kentucky Professional Firefighters Program Fund administrative regulations, the following words and phrases have the following meanings:
(1) "Allowable sickness, injury or other medical causes" for the purpose of this regulation shall mean reasons for which time off the job is granted by the local government for sickness, injury, or other medical causes.
(2) "Annual salary" means base pay for forty (40) hours and any required scheduled overtime.

(3) "Certified training" means firefighter training given by a certified instructor and approved and recorded by the commission.
(4) "Commission" means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.
(5) "Department" means the Department of Housing, Buildings and Construction.
(6) "Fiscal year" means the period July 1 through June 30 of each twelve (12) month period.
(7) "Full-time firefighters" means individuals who work a minimum of 2,080 hours per year as a member of a fire department or fire protection district. This definition is intended to cover jobs involving the suppression, investigation, inspection and prevention of emergency situations, but does not include public safety officers or any peace officer who has responsibility for the prevention and detection of crime other than arson.
(8) "Fund" means Professional Firefighters Foundation Program Fund.
(9) "Incentive pay" means monies from the fund used to supplement compensation paid to full-time paid firefighters.
(10) "Leave of absence" for the purpose of this regulation shall mean a leave granted by the local government by which the firefighter is employed.
(11) "Local government" means any city or county, or any combination thereof, or urban county government of the Commonwealth, including airport boards thereof.
(12) "Member," for purposes of determining initial eligibility under the fund, shall mean an individual who has completed a 200-hour basic training course if hired prior to July 15, 1982 or a 400-hour basic training course if hired on or after July 15, 1982 in fire suppression, extinguishment and self-protection as approved by the commission and whose job position is such that the individual may be subject to responding to an emergency situation at the direction of the fire chief. This definition is intended to cover jobs involving the suppression, investigation, inspection and prevention of emergency situations. Janitorial, maintenance, and clerical personnel are specifically exempted from this definition.
(13) "Professional firefighter" means any sworn member of a paid municipal fire department organized under KRS Chapter 95 or a fire protection district organized under KRS Chapter 75, or a county fire department created pursuant to Chapter 67.
(14) "Scheduled overtime" means those working hours required beyond forty (40) hours a week in order to meet the requirements of KRS Chapter 95 concerning firefighters working hours.
(15) "Total annual compensation" means the base pay, including longevity, plus scheduled overtime.

Section 2. Eligibility. Each local government which meets the following requirements shall be eligible to participate and share in the distribution of funds when it has made application on forms prescribed by the commission and the commission has determined that the local government has met the eligibility criteria as stated in KRS 95A.230. [Those criteria are:]
[(1) Employs one (1) or more full-time firefighters.]
[(2) Pays a minimum annual salary of $8,000.]
[(3) Maintains as a minimum educational requirement, for anyone newly employed as a firefighter after August 1, 1980, high school graduation or its equivalent.]
[(4) Requires all firefighters employed on or after July 15, 1982 to successfully complete within one (1) year of the date of employment a basic training course of a minimum of 400 hours as mandated by the commission as to subject matter and number of hours for each subject at a school or by a method certified or recognized by the commission.]
[(5) Local units which have not previously participated in the fund shall require all firefighters who have been employed for at least one (1) year by the local unit on the date of initial participation to have completed a basic training course certified or recognized by the commission of at least 400 hours duration. All firefighters employed less than one (1) year prior to or hired after the date of initial participation shall complete the basic training within one (1) year of the date of employment as required for participating local units.]
[(6) Requires all firefighters to successfully complete in each calendar year an in-service training program appropriate to the firefighter's rank and responsibilities of at least 100 hours duration at a school or through a method certified or recognized by the commission.]
(1) [(7)] The commission shall review the qualifications of firefighters employed by local units after the effective date of this regulation, to determine the basic training, if any, which the firefighter may be required to successfully complete prior to being eligible to participate in the fund.
(2) [(8)] Requires compliance with all rules and regulations issued by the commission to facilitate the administration of the fund and further the provisions of KRS Chapter 95A.
(3) [(9)] Requires compliance with all provisions of law applicable to local firefighters.
(4) [(10)] Any firefighter who does not possess a high school degree or its equivalent and who has been deemed eligible to participate in the fund pursuant to KRS Chapter 95A who terminates firefighter service forfeits such eligibility and must meet the minimum educational requirement to reparticipate in the fund.
(5) [(11)] Any firefighter who possesses sufficient training to meet the basic training requirements established by the commission and who terminates or is granted a leave of absence from firefighter service for a period exceeding one (1) year (365 days) forfeits such eligibility and must meet the minimum training requirements to reparticipate in the fund. If his separation or leave of absence does not exceed one (1) year, he shall be considered eligible for participation in the fund.
(6) [(12)] Should an individual firefighter be off duty due to allowable sickness, injury, or other medical cause in his/her first year of employment, he/she shall have an additional amount of time equal to the required time off to acquire the balance of his initial 400 hours of required training or after the first year of his/her 100 hours of required training to maintain his/her eligibility.
(7) [(13)] A copy of the high school diploma or GED certificate for each firefighter where

required must be maintained by the local unit and must be available for review by appropriate commission personnel.

(8) [(14)] If, after having successfully completed a certified basic training course, a firefighter transfers from one (1) participating local unit to another, he shall be eligible to receive payments from the fund providing he continues to meet the requirements of the fund as set down by the commission.

(9) [(15)] If a firefighter transfers from one (1) fire department to another, paid or volunteer, all certified training received by him/her shall be recognized by the fire department to which he/she transferred and shall be considered toward his/her eligibility for participation in the fund.

Section 3. Participation Requirements. (1) Beginning July 1, 1982, an eligible local government shall be entitled to receive annually an incentive of $2,500 for each qualified professional firefighter it employs.

(2) Each qualified professional firefighter, whose local government receives an incentive pursuant to subsection (1) of this section, shall be paid by that local government the incentive which his qualifications brought to the local government. The incentive paid each qualified firefighter shall be in addition to his regular salary.

(3) Participation in the Professional Firefighter's Incentive Pay Program during the first fiscal year of the program's existence (January 1 - June 30, 1981) shall require that application be made to the commission within the dates of August 1, 1980 through October 20, 1980. Thereafter, application must be made annually by local governments for new or continued participation. Applications shall be accepted from February 1 through April 30 of each year. Local governments failing to make application within the specified dates shall not be considered for participation until the next application filing period.

(4) The commission shall determine which local governments are eligible to share in the fund and may withhold or terminate payments to any local government that does not comply with the requirements of KRS Chapter 95A or the rules and regulations issued by the commission thereunder.

Section 4. Local Use of Funds. Funds made available to local governments shall be received, held and expended in accordance with the provisions of this act, any rules and regulations issued by the commission, and the following specific restrictions:

(1) Funds provided shall be used only as a direct monetary incentive to firefighters' compensation.

(2) Funds provided shall be used only to compensate firefighters who have complied with Section 2(3), (4), and (6) of this regulation.

(3) Each firefighter shall be entitled to receive the state incentive which his qualifications brought to the local government.

(4) Funds shall not be used to supplant existing salaries or as a substitute for normal salary increases periodically due to a firefighter.

(5) No firefighter shall receive monies from this fund for employment with more than one (1) employer and in no instance shall receive dual payment.

Section 5. Certification of Funds. The Department of Finance, on the certification of the commission, shall draw warrants as specified on the State Treasury for the amount of the fund due each eligible local government. Checks shall be issued by the State Treasurer and transmitted to the commission for distribution to the proper officials or participating local governments which have complied with the provisions of KRS Chapter 95A and this regulation. Beginning January 1, 1981, and on the first day of each month thereafter, the share of each eligible local unit shall be distributed from the fund.

Section 6. Available Funds. (1) If funds appropriated by the General Assembly and otherwise made available to the fund are insufficient to provide the amount of money required by Section 3(1) of this regulation, the commission shall make a uniform percentage reduction in the allotment of funds available.

(2) Funds appropriated by the General Assembly and unexpended by the commission at the close of the fiscal year for which the funds were appropriated and otherwise made available to this fund pursuant to KRS 136.340 to 136.400, KRS Chapter 42 and KRS 95A.220 shall not lapse but shall be carried forward into the following fiscal year.

Section 7. Transmittal of Funds. (1) Request for funds by the local unit shall be submitted to the department not later than thirty (30) days prior to the beginning of the month in which the funds are to be expended.

(2) The department shall mail fund checks by the first day of each month to all local units which have filed timely requests for funds.

(3) The local unit shall acknowledge receipt of funds to the department on forms provided for that purpose.

Section 8. Local Unit Distribution of Funds. (1) The local unit shall include the incentive compensation paid to each firefighter from the fund as a part of the firefighter's salary in determining all payroll deductions.

(2) The local unit shall provide each firefighter with a check stub or separate receipt upon which the gross amount of incentive funds paid to the firefighter is identified.

(3) The local unit shall disburse incentive funds during the month for which the funds are requested.

(4) The local unit shall maintain records to document that each firefighter devotes sufficient hours performing firefighter's duties and training to qualify him for incentive funds consistent with his annual salary.

Section 9. Quarterly Reports. (1) Each participating local unit shall submit quarterly reports to the department within fifteen (15) days of the close of the quarter falling on March 31, June 30, September 30 and December 31 of each year.

(2) The quarterly report shall include the name, rank, social security number, date of employment, annual compensation and the amount of incentive funds received for each firefighter and any other information specifically requested on the respective quarterly report form.

Section 10. Local Audits. (1) The local unit may be audited by the department pursuant to

established procedures.

(2) For audit purposes, the local unit shall maintain accurate financial records. Such records shall include, but are not limited to, books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks and any related document and record.

(3) These records shall be retained by the local unit until destruction is authorized by the commission.

Section 11. False or Fraudulent Statements. (1) Any person charged with the responsibility of making an application for the local unit, including but not limited to the fire chief and fiscal officer, who knowingly or willfully makes any false or fraudulent statement or representation in any record or report to the commission under KRS Chapter 95A or this regulation [shall cause the unit of government which he represents to become ineligible for further funds and that unit of government] may be responsible for the return to the State Treasury of those funds which were received through these false or fraudulent statements or representations. Eligibility can be reestablished by submitting a new application as outlined in Section 2 of this regulation after settlement has been completed to the satisfaction of the commission.

(2) Any person who knowingly or willfully makes a false or fraudulent statement or representation in any record or report to the commission under this act shall be fined not less than $100 nor more than $500 or imprisoned for not less than thirty (30) days nor more than one (1) year or both.

Section 12. Appeals. (1) No decision of the commission which negatively affects the eligibility of a firefighter to be a recipient of the fund shall be final until said firefighter shall have been afforded an opportunity to be heard on the matters.

(2) An appeal may be taken from a final decision of the commission to withhold or terminate payment from the fund to any local government. Said appeal shall be to the circuit court of the circuit where the controversy originated.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on Monday, January 22, 1990, 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: Grant Winston, Office of Attorney General, Capitol Building, Frankfort, Kentucky 40601-3494. If no written requests to appear at the public hearing are received by January 17, 1990, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Grant Winston

NOTE: Because these amendments are made at the request of the Interim Committee on Cities and there are no substantive changes, the answer to the questions below 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? Yes

PUBLIC PROTECTION AND REGULATION CABINET
Commission on Fire Protection
Personnel Standards and Eduation
(Proposed Amendment)

815 KAR 45:040. Survivor benefits, death of volunteer firefighter.

RELATES TO: KRS Chapter 61
STATUTORY AUTHORITY: KRS 61.315, 61.316
NECESSITY AND FUNCTION: KRS 61.315 and 61.316 authorize the payment of a survivor's benefit of $25,000 to the survivors of a volunteer firefighter who is killed in the line of duty. This regulation establishes the procedures and criteria which shall be utilized to determine the eligibility of survivors of a firefighter killed in the line of duty, to be paid the survivor's benefit.

Section 1. Definitions. As employed in this regulation for determination of eligibility for payment of survivor benefits, the following words and phrases shall have the following meaning:

(1) Volunteer firefighter. Volunteer firefighter for the purpose of this regulation shall mean any active member of a volunteer fire department recognized under KRS 17.250 or a bystander present at the scene of an emergency who is recruited for assistance by the individual in charge.

(2) Performance of duty. A volunteer firefighter shall be deemed to be acting in the performance of his duties for the purpose of this regulation when engaged in activities of firefighting, fire drills or other related training; rescue or emergency activities; provided such activities are performed at the direction or with the knowledge of an officer of the fire department or when immediate action is required at the scene of an emergency not involving his department or other emergency organization.

(a) These activities shall include repairing or doing other work about or in the fire or emergency apparatus or building and grounds of the fire department upon the authorization of the chief of the fire department or other authorized person in charge or while answering any emergency calls for any purpose or while riding in or upon the fire or emergency apparatus which is owned or used by the fire department or while performing other duties of such fire department as authorized by the jurisdiction which the department serves.

(b) These activities shall include going to or directly returning from such activities to the firefighter's home, place of business or other place where he shall have been when he received the call or alarm.

(c) These activities shall include organized meetings related to the fire service and travel to and from such meetings whether local, state, or national, as long as he is representing his local, state or national fire related organization.

(3) Active member. For the purpose of this regulation, an active firefighter is one that is listed on the department roster and participates in the department's training programs and other various activities.

(4) Heart or circulatory malfunction. For the purpose of this regulation, heart or circulatory malfunction shall mean myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident which the symptoms of such malfunction are first medically treated within forty-eight (48) hours after participation in the performance of the duties of a voluntary firefighter as described in this regulation.

(5) Death in performance of duty. For the purpose of this regulation, death shall mean death which occurs as a direct result of an act or acts in the performance of duty as described in this regulation and shall include death which results from a heart or circulatory malfunction which is treated within forty-eight (48) hours after participation in the performance of said duties or the results of illness, sickness or injury caused by the performance of said duties which result in death within twelve (12) months of such stated activities as described in subsection (2) of this section provided death is not caused by suicide or self-inflicted injury.

(a) If death occurs after twelve (12) months and is believed to be related to the above state causes, the commission has the right of review with the possibility of determination of death in performance of duty.

(b) These activities shall not include participation in any sports or athletic event or contest, whether for the purpose of fund raising or any other purpose.

(6) Beneficiaries. Benefits shall be paid to the surviving spouse; if no surviving spouse, then payment shall be made to the surviving children; if no surviving spouse or children, the benefit shall be paid to any dependent parents of the deceased. Benefits paid under these statutes do not accrue to the decedent's estate. If decedent is not survived by an eligible survivor, no benefits shall be paid under either KRS 61.315 or 61.316.

(7) Heart or circulatory malfunction limitations. After July 15, 1984, should an individual become an active member of a fire department and has not within five (5) years prior to the date of membership been medically diagnosed as having had or has received any medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident, his eligible survivors shall receive the benefits should he/she be killed in the line of duty.

(a) Should he/she have been medically diagnosed as having had or receiving any medication for the above illnesses within five (5) years prior to becoming an active member of a fire department and presents a medical statement to the commission from his/her doctor, that the individual has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting, his/her eligible survivors shall be eligible to receive the benefits granted through KRS 61.315 or 61.316 should said firefighter be killed in the line of duty.

(b) After July 15, 1984, should an active member of a fire department be medically diagnosed as having had or is prescribed medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident and returns to active fire service, his/her survivors shall not be eligible to receive benefits from this program in the event of the firefighter's death until a medical statement from his/her doctor that the individual has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting is supplied the commission. Upon review and approval of said statement by the commission, the firefighter's survivors shall again become eligible to receive benefits from this program.

(8) Autopsy. The commission reserves the right to request an autopsy providing sufficient cause can be shown for such a request. Should an autopsy be performed for any reason, a copy of the report signed by the individual who performs the autopsy and a notary public shall be furnished the commission.

(9) Dependents. "Child or children" includes stepchildren, <u>naturally born children, children born through medical asistance,</u> legally adopted children, <u>and children born posthumously</u> [posthumous children and recognized illegitimate children]. "Parent" includes stepparents and parents by adoption.

(10) Commission. Commission for the purpose of this regulation means the commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.

Section 2. Application. Upon the death in the line of duty, as defined by this regulation, of a volunteer firefighter, the fire department of which he was a member at the time of death shall notify in writing the commission's administrator in the Office of State Fire Marshal, of the death. Upon receipt of such notification, the

administrator shall send the proper forms to the notifying fire department in care of the chief as well as the proper forms to the known survivors of the deceased firefighter. Upon receipt of the forms furnished by the commission, the chief and survivors or their representative shall properly fill out the said forms and return them to the commission in care of the administrator. Upon the receipt of the properly filled out forms, a committee of the commission appointed by the chairman of the commission shall review the applications and forward them with their recommendations to the full commission for determination of eligibility. Should there be any questions about the application the committee and the administrator has the authority to seek clarification of the questions on behalf of the commission.

Section 3. Certification of Payment of Benefits. Upon certification of survivorship rights to the Volunteer Firefighter's Death Benefit the Department of Finance shall draw a warrant in the amount of $25,000 on the funds realized from the collection of the insurance premium surcharge as provided for in KRS 136.392; a check shall be issued by the State Treasurer and transmitted to the commission's administrator for payment to the eligible survivor or survivors.

Section 4. False and Fraudulent Statements. Any person who knowingly or willfully makes any false or fraudulent statements or representation in any record or report to the commission under KRS 61.315 and 61.316 or this regulation shall cause the survivors to become ineligible for further funds and those survivors may be responsible for the return to the State Treasury of those funds which were received through these false or fraudulent statements or representations.

Section 5. Appeals. (1) No decision of the commission which negatively affects the eligibility of a survivor to be a recipient of the fund shall be final until said survivor shall have been afforded an opportunity to be heard on the matters.

(2) An appeal may be taken from a final decision of the commission to withhold payment from the fund to any survivor. Said appeal shall be to the circuit court of the circuit where the controversy originated.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Grant Winston
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(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

PUBLIC PROTECTION AND REGULATION CABINET
Commission on Fire Protection Personnel Standards and Education
(Proposed Amendment)

815 KAR 45:050. Requirements for obtaining firefighter's training facility grants.

RELATES TO: KRS 17.250, 45A.080, 322.360
STATUTORY AUTHORITY: KRS 17.250(4)
NECESSITY AND FUNCTION: KRS 17.250 requires that prior to any expenditures of funds for the purpose of constructing new or upgrading existing training facilities for firefighters, plans must be submitted to and reviewed by the Commission on Fire Protection Personnel Standards and Education. The purpose of these regulations is to set out standards and procedures for determining the amount and use of the funds to be expended from the Firefighter's Training Center Fund.

Section 1. Definitions. (1) "Commission" for the purpose of these regulations shall mean the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.

(2) "Cost estimate" for the purpose of these regulations shall mean an itemized list of

labor, items or materials needed and their estimated cost at the time of bidding. It can also mean the estimated cost of land or buildings to be purchased.

(3) "Quotations or bids" for the purpose of these regulations shall contain the same information as cost estimates.

Section 2. Eligibility. (1) To qualify to receive aid under the Firefighter Training Center Fund, fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized fire departments or groups or associations of fire departments operated and maintained on a nonprofit basis in the interest of the health, safety, prosperity and security of the inhabitants of the Commonwealth, must maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus.

(2) Any fire department or entity eligible for and receiving funding pursuant to these regulations shall have a minimum of fifty (50) percent of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

Section 3. Participation Requirements. (1) There shall be submitted to the commission an application which shall contain, but not be limited to, a letter of application, containing a general statement of intent; a list of fire departments and agencies that will use the facility; a list of what is available to the applicant, such as land, free labor or materials, etc.; and name of an agent or contact person; a drawing or sketch of the proposed training center, as well as building drawing if applicable; a cost estimate as stated in the definitions of these regulations.

(2) All applications shall [must] comply with KRS 45.075 through 45.800 applicable to capital construction projects statutes and the requirements stated in subsection (1) of this section [the state laws applicable to Capital Construction projects and the requirements stated in this regulation].

(a) Quotations or bids shall be obtained from at least three (3) suppliers for all expenditures of less than $10,000.

(b) Expenditures exceeding $10,000 or in excess of the requirements of KRS 424.260, whichever applies, shall require advertisement in newspapers prior to letting the bid to inform the public and suppliers of the needs of the fire department and assure that purchases will be at the lowest cost.

(c) Capital Construction projects exceeding the cost of $25,000, shall require bidding, advertisement and the services of an architect or professional engineer registered in the state of Kentucky.

(d) Equipment expenditures exceeding $50,000 shall comply with paragraphs (a), (b) and (c) of this subsection and shall be submitted to and approved by the Capital Construction and Equipment Oversight Committee.

(3) Permits shall be obtained for all electrical installations; all plumbing installations; all fuel installations; and boiler and pressure vessel installations.

Section 4. Processing Applications. (1) The commission shall review the applications and, subject to funds available, shall recommend to the State Fire Marshal which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.

(2) No funds shall be expended for any purpose other than that for which it is approved without the approval of the commission.

(3) If funds are granted to an applicant and are not to be used for the purpose granted, the applicant's agent shall contact the commission through its administrator directly, giving the reason any change is required or desired in the original plan; and resubmit new plans and cost estimates which shall be approved by the commission; or return the funds.

(4) Granted funds shall not be held longer than twelve (12) calendar months after the date of the grant check without reasonable progress toward the purpose of the grant. If no progress has been made or there is insufficient progress in the consideration of a majority of the commission members after twelve (12) months, the remaining funds shall be returned.

(5) When expenditures are made, receipts for funds expended during each quarter shall be sent by the 15th of the following month. Receipts for January, February and March shall [should] be in the hands of the Commission Administrator by the 15th of April and so on.

(6) Maintenance of the training facilities and[/or] equipment purchased with the granted funds shall be the responsibility of the applicant. A reasonable fee may be charged for use of the facilities by others than the applicant's members. These fees are to be used for the maintenance of the facilities or equipment.

(7) Any false statements made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on Monday, January 22, 1990, 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: Grant Winston, Office of Attorney General, Capitol Building, Frankfort, Kentucky 40601-3494. If no written requests to appear at the public hearing are received by January 17, 1990, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Grant Winston

NOTE: Because these amendments are made at the request of the Interim Committee on Cities and

there are no substantive changes, the answer to the questions below 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:
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(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? Yes

PUBLIC PROTECTION AND REGULATION CABINET
Commission on Fire Protection
Personnel Standards and Education
(Proposed Amendment)

815 KAR 45:060. Survivor benefits death of paid firefighter.

RELATES TO: KRS Chapter 61
STATUTORY AUTHORITY: KRS 61.315
NECESSITY AND FUNCTION: KRS 61.315 authorizes the payment of a survivor's benefits of $25,000 to the survivors of a paid firefighter who is killed in the line of duty. These regulations establish the procedures and criteria which shall be utilized to determine the eligibility of survivors of a firefighter killed in the line of duty, to be paid the survivor's benefit.

Section 1. Definitions. As employed in the regulation for determination of eligibility for payment of survivor benefits, the following words and phrases shall have the following meaning:
(1) Paid firefighter. Paid firefighter for the purpose of these regulations shall mean every paid firefighter who is employed by any county, city, metro-government, fire district as established through KRS Chapter 75, or a fire department recognized pursuant to KRS 17.250 which operates and maintains a fire department on a nonprofit basis in the interest of the health and safety of the inhabitants of the Commonwealth.
(2) Performance of duty. A paid firefighter shall be deemed to be acting in the performance of his duties for the purpose of these regulations when engaged in activities of firefighting, fire drills or other related training; rescue or emergency activities; provided such activities are performed at the direction or with the knowledge of an officer of the fire department or when immediate action is required at the scene of an emergency not involving his department or other emergency organization.
(a) These activities shall include repairing or doing other work about or in the fire or emergency apparatus or building and grounds of the fire department upon the authorization of the chief of the fire department or other authorized person in charge or while answering any emergency calls for any purpose or while riding in or upon the fire or emergency apparatus which is owned or used by the fire department or while performing other duties of such fire department as authorized by the jurisdiction which the department serves.
(b) These activities shall include organized meetings related to the fire service and travel to and from such meetings whether local, state, or national, as long as he is representing his local, state or national fire related organization.
(3) Active member. For the purpose of these regulations, an active firefighter is one that is listed on the department roster and participates in the department's training programs and other various activities.
(4) Heart or circulatory malfunction. For the purpose of these regulations, heart or circulatory malfunction shall mean myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident which the symptoms of such malfunction are first medically treated within forty-eight (48) hours after participation in the performance of the duties of a paid firefighter as described in these regulations.
(5) Death in the line of duty. For the purpose of these regulations, death shall mean death which occurs as a direct result of an act or acts in the performance of duty as described in these regulations and shall include death which results from a heart or circulatory malfunction which is treated within forty-eight (48) hours after participation in the performance of said duties or the results of illness, sickness or injury caused by the performance of said duties which result in death within twelve (12) months of such stated activities as described elsewhere in these regulations providing death is not caused by suicide or self-inflicted injury.
(a) If death occurs after twelve (12) months and is believed to be related to the above stated causes, the commission has the right of review with the possibility of determination of death in performance of duty.
(b) These activities shall not include participation in any sports or athletic event or contest, whether for the purpose of fund raising or any other purpose.
(6) Survivors. Benefits shall be paid to the surviving spouse; if no surviving spouse, then payment shall be made to the surviving children; if no surviving spouse or children, the benefit shall be paid to any dependent parents of the deceased. Benefits paid under these statutes do not accrue to the decendent's estate. If decedent is not survived by an eligible survivor, no benefits shall be paid under KRS 61.315.
(7) Heart or circulatory malfunction limitations. After July 15, 1984, should an individual become an active member of a fire department and has not within five (5) years

prior to the date of membership been medically diagnosed as having had or has received any medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident, his eligible survivors shall receive the benefits should he/she be killed in the line of duty.

(a) Should he/she have been medically diagnosed a having had or receiving any medication for the above illnesses within five (5) years prior to becoming an active member of a fire department and presents a medical statement to the commission from their doctor, that the individual has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting, their eligible survivors shall be eligible to receive the benefits granted through KRS 61.315 should said firefighter be killed in the line of duty.

(b) After July 15, 1984, should an active member of a fire department be medically diagnosed as having had or is prescribed medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident and returns to active fire service, their survivors shall not be eligible to receive benefits from this program in event of the firefighter's death until a medical statement from their doctor that the individual has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting is supplied the commission. Upon review and approval of said statement by the commission, the firefighter's survivors shall again become eligible to receive benefits from this program.

(8) Autopsy. The commission reserves the right to request an autopsy providing sufficient cause can be shown for such a request. Should an autopsy be performed for any reason, a copy of the report signed by the individual who performs the autopsy and a notary public shall be furnished the commission.

(9) Dependents. "Child or children" includes stepchildren, legally adopted children, children born posthumously, naturally born children and children born through medical assistance [posthumous children and recognized born out of wedlock children]. "Parent" includes stepparents and parents by adoption.

(10) Commission. Commission for the purpose of these regulations means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.

Section 2. Application. (1) Upon the death in the line of duty, as defined by these regulations, of a paid firefighter, the fire department of which he was a member at the time of death shall notify in writing the commission's administrator in the Office of State Fire Marshal, of the death. Upon receipt of such notification, the administrator shall send the proper forms to the notifying fire department in care of the chief as well as the proper forms to the known survivors of the deceased firefighter.

(2) Upon receipt of the forms furnished by the commission, the chief and survivors or their representative shall properly fill out the said forms and return them to the commission in care of the administrator.

(3) Upon the receipt of the properly filled out forms, a committee of the commission appointed by the chairman of the commission shall review the applications and forward them with their recommendations to the full commission for determination of eligibility. Should there be any questions about the application, the committee and the administrator has the authority to seek clarification of the questions on behalf of the commission.

Section 3. Certification of Payment of Benefits. Upon certification of survivorship rights to the Paid Firefighter's Death Benefit, the sum of $25,000 shall be paid by the state treasurer from the general expenditure fund of the state treasury. The treasurer shall issue a check for the above amount and transmit said check to the commission's administrator for payment to the eligible survivor or survivors.

Section 4. False and Fraudulent Statements. Any person who knowingly or willfully makes any false or fraudulent statements or representation in any record or report to the commission under KRS Chapter 61.315 or this regulation shall cause the survivors to become ineligible for further funds and those survivors may be responsible for the return to the state treasury of those funds which were received through these false or fraudulent statements or representations.

Section 5. Appeals. (1) No decision of the commission which negatively affects the eligibility of a survivor to be a recipient of the fund shall be final until said survivor shall have been afforded an opportunity to be heard on the matters.

(2) An appeal may be taken from a final decision of the commission to withhold payment from the fund to any survivor. Said appeal shall be to the circuit court of the circuit where the controversy originated.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: December 14, 1989
FILED WITH LRC: December 14, 1989 at 4 p.m.

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Grant Winston

NOTE: Because these amendments are made at the request of the Interim Committee on Cities and there are no substantive changes, the answer to the questions below is "none".

(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
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(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:020. Eligibility requirements.

RELATES TO: KRS 194.050
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Eligibility Requirements. In accordance with regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, national uniform standards of eligibility for the Food Stamp Program, composed of both financial and nonfinancial criteria, shall be utilized. Financial criteria shall consist of income and resource limitations. Nonfinancial criteria shall consist of certain technical factors. Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. The income eligibility standards are derived from the Office of Management and Budget's (OMB) nonfarm income poverty guidelines.

Section 2. Countable Income. All income from any source shall be counted, except income specifically excluded in Section 3 of this regulation, including but not limited to:

(1) Wages earned by a household member, including all wages received by a striker the day prior to the strike or wages received during the month of application, whichever is higher, in accordance with 7 CFR 273.1(g).
(2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business.
(3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursements.
(4) Payments under Title I (Volunteers in Service to America, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 shall be considered earned income unless specifically excluded in 7 CFR 273.9(c)(10)(iii).
(5) The earned or unearned income of excluded household members as set forth in 904 KAR 3:035, Section 5(3).
(6) Assistance payments from federal or federally aided public assistance such as supplemental security income (SSI) or aid to families with dependent children (AFDC); general assistance (GA) programs, or other assistance programs based on need.
(7) Annuities; pensions; retirement; veteran's or disability benefits; ongoing Agent Orange payments; worker's or unemployment compensation; strike pay; old-age, survivors, or social security benefits; foster care payments for children or adults; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week.
(8) Wages earned by a household member which are garnisheed or diverted by an employer and paid to a third party for a household expense.
(9) Support or alimony payments made directly to the household from nonhousehold members. This includes any portion of such payments returned to the household by the cabinet.
(10) Such portion of scholarships, educational grants, fellowships, deferred payment loans for education, veterans educational benefits and the like which are not excludable under Section 3(6) of this regulation.
(11) Payments from government sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.
(12) Monies withdrawn or dividends which are or could be received from a trust fund considered to be excludable under 7 CFR 273.8(e)(8) by a household, unless otherwise exempt under the provisions set forth in 7 CFR 273.9(c).
(13) That amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien in accordance with 7 CFR 273.11(h).
(14) Assistance monies from another program, as specified in 7 CFR 273.11(j), which are withheld for purposes of recouping an overpayment which resulted from the household's intentional failure to comply with that program's requirements. These withheld monies shall be considered as income in accordance with 7 CFR 273.11(j).
(15) Earnings to individuals who are participating in on-the-job training programs

under the Job Training Partnership Act. This provision does not apply to household members under nineteen (19) years of age who are under the parental control of another adult member.

(16) Portions of Indian Per Capita payments made pursuant to P.L. 98-64 in excess of $2,000 per payment per individual, effective September 1, 1989.

Section 3. Income Exclusions. The following payments shall not be considered as income:

(1) Money withheld from an assistance payment, earned income or other income source, or monies received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, provided the overpayment was not excludable in accordance with 7 CFR 273.9(c). However, monies withheld, as specified in Section 2, subsection (14) of this regulation shall not be excluded.

(2) Child support payments received by AFDC recipients which must be transferred to the division administering Title IV-D of the Social Security Act, as amended, to maintain AFDC eligibility. However, any portion of such monies returned to the household by the cabinet shall not be excluded.

(3) Any gain or benefit which is not in the form of money payable directly to the household.

(4) Money payments that are not payable directly to a household, but are paid to a third party for a household expense are excludable as a vendor payment as defined in 7 CFR 273.9(c).

(5) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty (30) dollars in a quarter.

(6) As defined in 7 CFR 273.9(c), educational loans on which payment is deferred, grants, scholarships, fellowships, veteran educational benefits, and the like to the extent that they are made available for tuition and mandatory fees at an institution of post secondary education, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped. Origination fees and insurance premiums on student loans are excludable charges. For federal education assistance programs funded under Title IV of the Higher Education Act or effective December 1, 1988, Student Assistance Programs under the Bureau of Indian Affairs, additional income exclusions include costs of books, travel, routine supplies, and cost for rental or purchase of equipment used for educational purposes. Portions of nonfederal (state, local, or private) deferred payment educational loans are excluded based on provisions contained in 7 CFR 273.9(c)(4).

(7) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

(8) Reimbursements for past or future expenses to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household as defined in 7 CFR 273.9(c).

(9) Money received and used for the care and maintenance of a third party beneficiary who is not a household member.

(10) The earned income of children who are members of the household, who are students at least half time and who have not attained their 18th birthday.

(11) Money received in the form of a nonrecurring lump-sum payment.

(12) The cost of producing self-employment income. If the cost of producing farm self-employment income exceeds the income derived from self-employment farming as defined in 7 CFR 273.11(a), such losses shall be offset against any other countable income in the household.

(13) Any income specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program.

(14) Any energy assistance payments made under federal laws or certified as excludable energy payments by FNS.

(15) Any cash donations based on need received on or after February 1, 1988 from nonprofit charitable organizations, not to exceed $300 in a federal fiscal quarter in accordance with 7 CFR 273.9(iv)(2).

(16) Foster care payments for foster children. This provision applies only when the household requests that the foster children be excluded from the household in determining eligibility (effective February 1, 1989).

(17) Up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II (effective February 1, 1989).

(18) Monies received under Section 3507 of the Internal Revenue Code (advanced payment of earned income credit).

(19) Indian Per Capita payments made pursuant to P.L. 98-64 as distribution from judgment awards and trust funds of $2,000 or less per individual per payment, effective September 1, 1989.

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program is limited to those households whose incomes fall at or below the applicable standards as established by FNS and which are set forth below:

(1) Households which contain a member who is elderly or disabled as defined in 904 KAR 3:010, Section 1(10) shall have their net income compared to 100 percent of the federal income poverty guidelines.

(2) Households which are categorically eligible as defined in CFR 273.2 do not have to meet either the gross or net income eligibility standards.

(3) All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A standard deduction per household per month. This standard shall be periodically adjusted by FNS to reflect changes in the cost of living for a prior period of time as determined by FNS.

(2) Twenty (20) percent of gross earned income.

(3) Payments for the actual cost for the care of a child or other dependent when necessary for a household member to seek, accept or continue employment or attend training or pursue

education preparatory to employment. This deduction shall not exceed the child care maximum established by FNS.

(4) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made. The shelter deduction shall not exceed the excess shelter maximum established by FNS, except that households containing an elderly or disabled member shall not be subject to said maximum with regard to the shelter deduction. The excess shelter maximum shall be adjusted periodically by FNS to reflect changes in the cost of living for a prior period of time. Allowable monthly shelter expenses shall be those expenses outlined in 7 CFR 273.9(d)(5). The cabinet shall develop a standard utility allowance for use in calculating shelter cost for those households which receive LIHEAP benefits or which incur heating/cooling (by air conditioning units only) costs separate and apart from their rent or mortgage payments in accordance with 7 CFR 273.9(d)(6). If the household is not entitled to the utility standard or does not choose to use the utility standard, it may claim actual utility expenses for any utility which it does pay separately. The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

(5) Allowable medical expenses, excluding special diets, in excess of thirty-five (35) dollars per month incurred by any household member who meets the definition of elderly or disabled, as set forth in 7 CFR 271.2, are those meeting the criteria set forth in 7 CFR 273.9(d)(3) including, but not limited to:

(a) Medical and dental care;

(b) Hospitalization or outpatient treatment and nursing care;

(c) Medication and medical supplies;

(d) Health and hospitalization premiums; and

(e) Dentures, hearing aids, eyeglasses and prosthetics.

Section 6. Resources. Uniform national resource standards of eligibility shall be utilized. Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 7 of this regulation and in accordance with 7 CFR 273.8, exceed:

(1) $3000: for all households with one (1) or more members, when at least one (1) member is sixty (60) years or older; or

(2) $2000: for all other households.

(3) Households which are categorically eligible as defined in 7 CFR 273.2 shall be considered as having met the food stamp resource requirement.

Section 7. Exempt Resources. The following resources shall not be considered in determining eligibility:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others.

(2) Household goods, personal effects including one (1) burial plot per household member, the cash value of life insurance policies and pension funds (except that Keogh plans which involve no contractual relationship with individuals who are not household members and Individual Retirement Accounts shall not be exempt), and prepaid burial plans if a contractual agreement for repayment must be signed in order to withdraw any funds.

(3) Licensed/unlicensed vehicles as specified in 7 CFR 273.8.

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis.

(5) Property which is essential to the employment or self-employment of a household member, in accordance with 7 CFR 273.8(e)(5).

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended.

(8) Resources whose cash value is not accessible to the household.

(9) Resources which have been prorated as income.

(10) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(11) Resources which are excluded for food stamp purposes by express provision of federal statute.

(12) Up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II (effective February 1, 1989).

(13) Income which is withheld by the employer to pay certain expenses directly to a third party as a vendor payment. This income is an excludable resource only if the remainder of the withheld income is not accessible to the household at the end of the year, effective September 1, 1989.

(14) Indian Per Capita payments made pursuant to P.L. 98-64 as distribution from judgment awards and trust funds of $2,000 or less per individual per payment, effective September 1, 1989.

(15) Purchases of $2,000 or less which are made solely with Indian Per Capita payments after December 31, 1981 but prior to January 12, 1983 are totally excluded from resources, effective September 1, 1989.

Section 8. Transfer of Resources. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer in accordance with 7 CFR 273.8(i).

Section 9. Nonfinancial Criteria. Nonfinancial eligibility standards apply equally to all households and consist of:

(1) Residency. A household must live in the county in which they make application;

(2) Identity. Applicant's identity will be verified; also, where an authorized representative applies for the household, both the applicant's and the authorized representative's identities will be verified;

(3) Citizenship and alien status. Program participation shall be limited to either citizens of the United States or eligible aliens, as outlined in 7 CFR 273.4. Individuals whose status is questionable shall be ineligible to participate until such status has been

verified;

(4) Household size. Size of household will be verified through readily available documentary evidence or through a collateral contract; and

(5) Students. Persons aged eighteen (18) to sixty (60) who are physically and mentally fit and enrolled at least half time in an institution of higher education are ineligible to participate unless they meet criteria specified in 7 CFR 273.5.

(6) Mandatory monthly reporting (MMR). Households shall be required to file monthly reports in accordance with 7 CFR 273.21 unless otherwise exempted by the appropriate federal agency.

(7) Social security number (SSN). Households applying for or participating in the Food Stamp Program must comply with SSN requirements by providing the SSN of each household member or applying for one (1) prior to certification. Failure to comply without good cause shall be determined for each household member and shall result in such individual's disqualification from participation in the Food Stamp Program until this requirement is met.

(8) Work registration. All household members, except those exempt in 7 CFR 273.7(b), shall be required to register for work, accept suitable employment and be subject to other work registration requirements specified in 7 CFR 273.7. Strikers whose households are eligible in accordance with 904 KAR 3:035, Section 5(9), shall be subject to the work registration requirements unless exempt for reasons other than employment at the time of application.

(9) Quality Control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

Section 10. Provisions contained in this regulation shall become effective December 1, 1989 [January 1, 1989] unless otherwise specified.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: November 20, 1989

FILED WITH LRC: November 21, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990 at 9 a.m. at the Department for Employment Services, Second Floor Conference Room. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: There is no method available to determine the number of food stamp recipients who would be entitled to such payments or income/resource exclusions. However, the number of Kentuckians entitled to Indian Per Capita or ongoing Agent Orange payments are minimal.

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

1. First year: Insignificant

2. Continuing costs or savings: Insignificant

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

(b) Reporting and paperwork requirements: Insignificant

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Insignificant

1. First year: Insignificant

2. Continuing costs or savings: Insignificant

3. Additional factors increasing or decreasing costs: Insignificant

(b) Reporting and paperwork requirements: Insignificant

(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:

TIERING: Was tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program 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. 7 CFR 273.9(b)(2), all state welfare commissioners, Region IV, 4/3/89; all state welfare commissioners, Region IV, 1/26/89; all state welfare commissioners, Region IV, 6/22/89.

2. State compliance standards. This regulation allows the state agency to count or exclude certain types of income/resources as prescribed by the Food and Nutrition Service for the food stamp purposes.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation allows the state agency to consider ongoing Agent Orange payments as income to the food stamp recipient. Indian Per Capita payments made pursuant to P.L. 98-64 of $2,000 or less may be excluded from income and resources for food stamp purposes. Also, purchases of $2,000 or less made solely with Indian Per Capita payments after December 31, 1981, but prior to January 12, 1983, are totally excluded from resources for food stamp purposes. The federal regulation also allows the state agency to exclude from resources wages which are withheld by the employer to pay certain expenses as vendor

payments to a third party (sometimes referred to as "Cafeteria Plan"). This income may be an excluded resource if the remainder of such income is not accessible to the household at the end of the year.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation coincide with those mandated by the Food and Nutrition Services. The guidelines for these provisions are specific with respect to the application of these policy amendments.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administration regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:031. Payments for home health services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for home health agency services.

Section 1. Payments to Home Health Agencies. (1) The cabinet shall reimburse participating home health agencies on the basis of interim rates set by the cabinet using available Medicare data and methodology as applied to Medicaid covered services, taking into consideration the upper limit shown in Section 2 of this regulation and the various policies and guidelines specified in the Cabinet for Human Resources Title XIX [Kentucky Medical Assistance Program] Home Health Reimbursement Manual, dated December [July] 1, 1989, which is hereby incorporated by reference. The Home Health Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost. A home health agency (but not including a publicly operated agency) whose nonaggregated base year costs (as shown in the cost report used to set the agency's interim rate) are below the prospective upper limit for the agency shall receive a cost containment incentive payment in accordance with the incentive payment schedule shown in the reimbursement manual; the incentive payment will not be subject to retrospective settlement. [The Kentucky Medical Assistance Program Home Health Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621.]

(2) Payments made at the interim rate (except for incentive payments) will be settled back to actual allowable cost at the end of the facilities' fiscal year, with actual allowable costs not to exceed the amounts that would be allowable taking into consideration the upper limit specified in Section 2 of this regulation. The Medicaid final rates (except for incentive payments) may not exceed federally established upper limits for Medicare.

Section 2. Application of Upper Limits. Publicly operated home health agencies (except new facilities as shown in Section 5 of this regulation) will be reimbursed at full allowable cost but are subject to the Medicare upper limits. Payments for other agencies (except payments for disposable medical supplies, as shown in Section 4 of this regulation), and incentive payments as shown in Section 1 of this regulation may not exceed a prospective upper limit which will be set at 105 percent of the weighted median of the array of allowable per visit costs of those agencies that will be subject to the upper limits with facilities placed in an urban or rural array based on the facility location for the following cost centers or disciplines: skilled nursing, speech pathology, physical therapy, occupational therapy, medical social services, and home health aid services. A determination as to whether a county is urban or rural will be made taking into account usual standard metropolitan statistical areas. The arrays shall be based on annual cost report data with costs trended through June 30 and indexed for the rate year; the rate year shall begin on July 1 and end on June 30; and the upper limit shall be subject to an annual adjustment to be effective on July 1 of each rate year. Aggregation of costs (i.e., shifting of allowable costs from one cost center to another if the limit is exceeded in one cost center but not in another) will be permitted. For rate years beginning July 1, 1986 and thereafter, the array shall be based on the latest available cost report as of May 31 preceding the rate year.

Section 3. Payments for Durable Medical Equipment. Effective July 1, 1989, home health agencies shall not be reimbursed for durable medical equipment.

Section 4. Disposal medical supplies shall be reimbursed on an interim basis at a percent of allowable billed charges with a settlement to actual costs at the end of the agency's fiscal year.

Section 5. New home health agencies shall be paid seventy (70) percent of the Title XIX maximum rate not to exceed Medicare upper limits, until a fiscal year end cost report is available. During this initial period, the rate can be adjusted if the provider documents the justification for a rate change by the submittal of a projected cost report.

Section 6. Owners' compensation shall be limited as shown in the Home Health Reimbursement Manual.

Section 7. Payments to Out-of-state Home Health Agencies Effective with Regard to Services Provided on or after July 1, 1989. (1) The cabinet shall reimburse participating out-of-state home health agencies at the lower of the Title XVIII maximum payment rate, the Title XIX maximum payment rate, or the agency's actual usual and customary billed charge.

(2) Disposable medical supplies shall be reimbursed at a rate of eighty (80) percent of the actual usual and customary billed charge.

Section 8. Appeals. Participating home health agencies are provided the following mechanism for a review of program decisions relating to the application of the policies and procedures governing home health agency payments.

(1) A home health agency operator may request reconsideration of a program decision by writing to the Director, Division of Reimbursement Operations [and Contracts]. This request must be received within forty-five (45) days following transmittal of the audited cost report to the agency or the notification of the agency's prospective rate. The request for workpapers pertaining to audit adjustments to the home health agency's cost report will not extend the forty-five (45) day time limit. The request for appeal shall indicate which adjustments the home health agency wishes to appeal. A blanket request to appeal the cost report will not be accepted. Upon receipt of the request for review, the division will determine the need for a program/vendor conference and will contact the home health agency to arrange a conference if needed. The conference, if needed, shall be held within sixty (60) days of the program's receipt of the home health agency's request for review unless delayed due to extenuating circumstances. Regardless of the program decision, the provider will be afforded the opportunity for a conference if he so wishes for a full explanation of the factors involved and the program decision. Following review of the matter, the director will notify the home health agency of the action to be taken by the division within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) If the Director of Reimbursement Operations' [and Contracts'] decision is unsatisfactory, the home health agency may then appeal the question to a reimbursement review panel established by the Commissioner of the Department for Medicaid Services which will include one (1) member of the Division of Reimbursement Operations [and Contracts], a representative of the Kentucky Association of Home Health Agencies, and a member of the Department for Medicaid Services (but not within the Division of Reimbursement Operations [and Contracts]) as designated by the commissioner, with the designated member to serve as chairperson. The request for review by the reimbursement review panel must be postmarked within twenty (20) days following the notification of the initial decision by the Director, Division of Reimbursement Operations [and Contracts]. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of a written request for the appeal. The question will be heard by the panel. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which must be considered in order to provide for equitable treatment and reimbursement of the provider.

Section 9. Audits may be performed by either the Medicare or Medicaid program; if audited by both, the Medicaid audit will take precedence over the Medicare audit.

[Section 10. The amendments to this regulation shall be effective with regard to services provided on or after July 1, 1989.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: December 6, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990 at 9 a.m. at the Department for Employment Services, Commissioner's Office Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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 home health agencies which participate in the Medicaid Home and Community Based Waiver.

(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: *Budget neutral - to establish and simplify a reimbursement methodology for providers who expand their service area.
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 Medicaid Services
(Proposed Amendment)

907 KAR 1:404. Incorporation by reference of the Independent Laboratory 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 independent laboratory 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 Independent Laboratory Services Manual, revised November 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: November 30, 1989
FILED WITH LRC: December 5, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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 laboratory 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 Medicaid Services
(Proposed Amendment)

907 KAR 1:436. Incorporation by reference of the Hospice 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 hospice 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 Hospice Services Manual, revised November 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: November 30, 1989
FILED WITH LRC: December 5, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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 hospice 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 Medicaid Services
(Proposed Amendment)

907 KAR 1:460. Coverage and payments for preadmission screening and annual resident review.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security

Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the coverage and payment provisions for preadmission screening and annual resident review.

Section 1. General Applicability. The provisions of this regulation are applicable for all individuals desiring admission to, or continued stay in, skilled nursing or general intermediate care facilities (SNFs/GICFs) participating in the Kentucky Medical Assistance Program.

Section 2. Deemed Consent for Preadmission Screening and Annual Resident Review. Any individual applying for admission to, or requesting a continued stay in, a skilled nursing or general intermediate care facility (SNF/GICF) participating in the Medicaid program on or after January 1, 1989 shall be deemed to have given his consent for the Cabinet for Human Resources to make the determination of appropriateness for the individual to enter or remain in the facility using the standards specified in Section 1919 of the Social Security Act.

Section 3. Responsibility for Preadmission Screening and Annual Resident Review (PASARR). The Department for Mental Health and Mental Retardation Services (DMHMRS) shall be responsible for determining whether individuals desiring to enter, or remain in, a skilled nursing or general intermediate care facility (SNF/GICF) participating in the Medicaid program are mentally ill or mentally retarded and if so, whether the individual requires the level of services provided by an SNF/GICF, and if such services are required, whether the individual requires active treatment for mental illness or mental retardation. A practicing physician's written statement that an individual requires the level of services provided by an SNF/GICF will be considered adequate documentation with regard to that requirement being met; however, for reimbursement to be provided under Title XIX an individual must be Medicaid eligible and meet the usual patient care criteria specified in 907 KAR 1:022 and 907 KAR 1:024. The DMHMRS may contract with mental health/mental retardation centers for evaluations and recommendations as to whether the individual is mentally ill or mentally retarded, or requires active treatment and may delegate the authority for the determination as to whether an individual may enter or remain in an SNF/GICF to the mental health/mental retardation centers; and may contract with other agencies, organizations or entities if necessary to fulfill DMHMRS's obligations with regard to the PASARR function.

Section 4. Payments for the Performance of Preadmission Screening and Annual Resident Review Functions. The Medicaid program shall be responsible for the costs of the PASARR program, and funds may be paid from the Medicaid program to the DMHMRS, or directly to contracted agencies, for the performance of the PASARR program; however, no funds shall accrue to the DMHMRS for this purpose which are in excess of the actual costs to DMHMRS (including contract costs) of implementing and operating the PASARR program.

Section 5. Admissions Criteria under PASARR. Admissions to Medicaid participating SNFs/GICFs must be in accordance with Section 1919 of the Social Security Act. The following represents the substance of the admissions criteria derived from Section 1919 of the Social Security Act.

(1) A person who is determined not to be mentally ill or mentally retarded is not subject to further PASARR activity.

(2) A person who is mentally ill or mentally retarded may be admitted to an SNF/GICF if he requires the appropriate level of care and a determination is made as to whether active treatment for mental illness or mental retardation is required.

(3) A person who is mentally ill or mentally retarded and who does not require the appropriate level of care may not be admitted to an SNF/GICF regardless of whether he requires active treatment for mental illness or mental retardation.

Section 6. Criteria for Annual Resident Review. Residents in Medicaid participating SNFs/GICFs are subject to annual resident review in accordance with Section 1919 of the Social Security Act. The following represents the substance of the criteria for annual resident review and continued stay derived from Section 1919 of the Social Security Act.

(1) A person who is determined not to be mentally ill or mentally retarded is not subject to further PASARR activity except for annual resident review to verify continuation of his mental health status.

(2) A person who is determined to be mentally ill or mentally retarded but who requires the level of care provided by an SNF/GICF may remain in the facility but a determination must be made as to whether active treatment for mental illness or mental retardation is required.

(3) A person who is mentally ill or mentally retarded but who is determined not to require the level of care provided by an SNF/GICF may remain in the facility if he has continuously resided in an SNF/GICF for thirty (30) months before the date of the determination so long as he requires active treatment for mental illness or mental retardation.

(4) An individual who is mentally ill or mentally retarded and who is determined not to require the level of care provided by an SNF/GICF may not remain in the facility if he has not continuously resided in an SNF/GICF for thirty (30) months prior to the date of the determination.

Section 7. Additional PASARR Admissions and Continued Stay Criteria. The following additional criteria for compliance with the PASARR admission and continued stay requirements shall be applied.

(1) A mentally ill or mentally retarded person who is of advanced years and competent to make an independent decision may be admitted to or remain in the facility if he meets the SNF/GICF level of care, is not a danger to himself or others, and chooses that level of care.

(2) A mentally ill or mentally retarded person may be admitted to an SNF/GICF for 120 days after release from an acute care hospital for convalescent care, if the individual needs the

SNF/GICF level of care and is not a danger to himself or others, without being subjected to further PASARR evaluation.

(3) A mentally ill or mentally retarded individual may be admitted to or reside in an SNF/GICF if he requires continuous nursing care or medical supervision and treatment and is terminally ill, and is not a danger to himself or others.

(4) A mentally ill or mentally retarded individual who is not a danger to himself or others may be admitted to or remain in an SNF/GICF based on severity of illness if he is: comatose; ventilator dependent; functions at the brain stem level; or has a diagnosis of Chronic Obstructive Pulmonary Disease, Severe Parkinson's Disease, Huntington's Disease, Amyo Lateraltropic Schlerosis, or Congestive Heart Failure, and any other diagnosis so determined by the United States Department of Health and Human Services, Health Care Financing Administration.

(5) Effective with regard to admissions made on or after December 1, 1989, a mentally ill or mentally retarded child under age twenty-one (21) who meets the SNF/GICF level of care may be admitted to and remain in a dual licensed pediatric facility if he requires immediate shelter pending determination of placement for longer term care.

(6) Effective with regard to admissions made on or after December 1, 1989, a mentally ill or mentally retarded individual who meets the SNF/GICF level of care and is not a danger to himself or others may be admitted to and remain in an SNF/GICF for respite care for up to fourteen (14) days, up to twice a year, without being subject to further PASARR evaluation.

Section 8. Responsibility of the Cabinet for Human Resources under PASARR for Inappropriately Placed Persons. The Cabinet for Human Resources shall be responsible for the safe and orderly discharge of residents determined through the PASARR process to be inappropriately placed. Additionally, the Cabinet for Human Resources shall be responsible for providing for, or arranging for, the provision of active treatment of those residents if such a need has been determined.

Section 9. Appeals. Individuals who are not qualified for admission to or continued stay in a Medicaid participating SNF/GICF as a result of a PASARR determination by the DMHMRS may appeal using the following process.

(1) If a person is determined not suitable for admission to or continued stay in an SNF/GICF as a result of the PASARR process, the individual will receive a notice from the DMHMRS (or peer review organization acting on behalf of the DMHMRS) which advises the individual of the negative decision, the reason for the negative decision, the procedure and time frame for requesting an appeal, and of the right to legal or other appropriate representation. An individual in an SNF/GICF must be allowed at least ten (10) days to transfer from the facility, and shall not be required to move during the appeal process if the decision is appealed within the ten (10) day period. The individual may appeal the decision at any time within thirty (30) days of the decision. The individual, his attending physician, and the facility, as appropriate, will be notified of the date, time, and place of the hearing. The hearing shall be conducted by the DMHMRS and the appeal decision rendered within thirty (30) days of the notice of appeal. If the determination is adverse to the individual, the negative decision will contain further appeal rights, the time frame and procedure for requesting a hearing, and the right to legal or other appropriate representation.

(2) Upon a negative hearing decision by the DMHMRS, the individual may within twenty (20) days of the notice of the decision request a further appeal of the decision. The appeal hearing will be conducted by the Division for Administrative Review, Department for Social Insurance as the agency of the Department for Medicaid Services. The hearing and further appeal rights will be in accordance with 904 KAR 2:055, Hearings and appeals.

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990 at 9 a.m. at the Department for Employment Services, Commissioner's Office Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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 skilled nursing or general intermediate care facilities (SNF/GICF); twenty to thirty individuals per year.

(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: *Negligible savings could result from a few less evaluations each year.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

PROPOSED REGULATIONS RECEIVED THROUGH DECEMBER 15, 1990

FINANCE AND ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:020. Definitions.

RELATES TO: KRS 164A.305
STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10)
NECESSITY AND FUNCTION: KRS 164A.325(10) provides that the Kentucky Educational Savings Plan Trust Board shall have the power to promulgate rules and regulations to carry out and effectuate the purposes and objectives of the Kentucky Educational Savings Plan Trust (KRS Chapter 164A). KRS 164A.305(1) through (16) defines certain terms and words, but does not define other terms and words which are necessary to carry out and accomplish the purposes, objectives and provisions of KRS Chapter 164A ("Act"). This regulation defines additional terms and words which shall be interpreted and applied in a uniform manner, used in the participation agreement forms, notices and other instruments related to the administration of the trust.

Section 1. Definitions. The language used in the administration of the trust contains some legal and technical terms as well as everyday terms which, of necessity, have specialized meaning. The following definitions shall be controlling in the interpretation and application of these words and phrases, except where the context clearly requires another interpretation:

(1) The term "academic period" shall mean one-eighth (1/8) of eight (8) semesters or one-twelfth (1/12) of twelve (12) quarters at a four (4) year institution; one-fourth (1/4) of four (4) semesters or one-sixth (1/6) quarters at a two (2) year institution; or an equivalent period for a vocational technical institution.

(2) The word "account" shall denote the account in the program fund established and maintained under the trust for a beneficiary;

(3) The term "account balance" shall mean the fair market value of an account as of the accounting date;

(4) The term "accounting date" shall mean the date, not later than the last business day of each quarter as determined by the program administrator;

(5) The term "administrative fee" shall mean the fee charged by the trust on cancellation or termination, which is the lesser of two (2) percent of the amount refunded or twenty-five (25) dollars, or for multiple substitution of beneficiaries, twenty-five (25) dollars;

(6) "Board expense" shall mean the actual and necessary expenses incurred by the board in connection with trust business;

(7) The term "control account" shall mean the account established for each beneficiary, with one (1) or more subsidiary accounts;

(8) The term "designated date" shall mean the date on which each beneficiary is eligible to be designated in a participation agreement;

(9) "Effective date" shall mean the date which a participant may enter into a participation agreement with the trust, which is on or after July 1, 1989;

(10) The term "general unrestricted endowment income" shall mean the investment income derived from the endowment fund which benefits are paid for a beneficiary attending an institution in the Commonwealth;

(11) The words "hardship" or "emergency" shall denote those circumstances and conditions of a sudden nature, including catastrophic illness, which deprive the participant or his dependent from the basic necessities or comforts of life or proper health care;

(12) The term "investment income" shall mean the earnings from the investments in the program fund and the endowment fund;

(13) The term "investment loss" shall mean a loss from the investments in the program fund and the endowment fund;

(14) The term "Kentucky ties" shall mean participants or beneficiaries who have contact or ties with the Commonwealth, such as current or former residence or employment in the Commonwealth, or family members with current or former residence in the Commonwealth;

(15) The term "minimum rate of return" shall mean the minimum earnings of four (4) percent guaranteed by the trust on payments made by the participant;

(16) "Notice to delay benefits under participation agreement" shall mean the form prescribed by the trust which a participant completes to delay benefits under a participation agreement after the beneficiary has attained the age of eighteen (18);

(17) "Notice to extend payments under participation agreement" shall mean the form prescribed by the trust which a participant completes to extend payments under a participation agreement beyond the beneficiary's age of eighteen (18);

(18) "Notice to increase/decrease payments under participation agreement" shall mean the form prescribed by the trust which a participant completes to increase or decrease payments under a participation agreement;

(19) "Notice to preauthorize debit" shall mean the form prescribed by the trust which a participant completes to notify the participant's financial institution to debit or charge the participant's checking or savings account for payments due under the participation agreement;

(20) "Notice to substitute beneficiary" shall mean the form prescribed by the trust which a participant completes to substitute a beneficiary;

(21) "Notice to terminate the participation agreement" shall mean the form prescribed by the trust which a participant completes to terminate a participation agreement under the trust;

(22) "Notice to use trust benefits" shall mean the form prescribed by the trust which a participant completes to notify the trust of the date benefits are to begin;

(23) "Notice to withhold payments from payroll" shall mean the form prescribed by the trust which a participant completes to direct the participant's employer to withhold payments from the participant's payroll check and forward that amount to the trust;

(24) The word "payments" shall denote the money paid by the participant to the trust under the participation agreement;

(25) The term "payment book" shall mean the

book which contains individual coupons, designating the amount and due date of each payment;

(26) The terms "property settlement agreement" or "decree of dissolution by the court" shall mean the agreement or judgment approved or entered by a court of competent jurisdiction which sets forth the participant's right, if any, to the participant's interest in the participation agreement;

(27) The term "restricted endowment income" shall mean the investment income from the endowment fund which may be distributed as benefits only to a particular group or class of beneficiaries, such as the beneficiaries of participants who are employees or members of a particular organization;

(28) The term "trust year" shall mean the fiscal year beginning July 1 and ending the following June 30 of each year for purposes of the calculation of benefits.

L. ROGERS WELLS, JR., Chairman

APPROVED BY AGENCY: November 14, 1989

FILED WITH LRC: November 28, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 9 a.m. in Room 207, Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, 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: Matt Wilson, Executive Director, Kentucky Educational Savings Plan Trust, 318 Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Matt Wilson

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Educational Savings Plan Trust Program as authorized pursuant to KRS 164A.300 through 164A.380. Qualifying participants or beneficiaries would be those who have "Kentucky ties", and beneficiaries who have not attained the age of 15. Aside from potential beneficiaries outside of the Commonwealth of Kentucky who have "Kentucky ties", there will be 812,000 children in the Commonwealth by 1990, under the age of 15 who are potential beneficiaries. The extent of those who will be participants and beneficiaries under the program are unknown.

(a) Direct and indirect costs or savings to those affected: The purpose of the legislation is to give participants an opportunity to fund future higher education needs for beneficiaries. This regulation defines additional terms and words which shall be interpreted and applied in a uniform manner, used in the participation agreement, forms, notices and other instruments related to the administration of the trust. However, the terms and words by definition, impose certain obligations on a participant and the trust. To defray the costs in administering the trust, a $25 or 2 percent of the amount refunded whichever is less, administration fee is required under certain conditions to cancel or terminate the participation agreement, or for multiple substitution of beneficiaries, $25, otherwise no fee is charged. In addition, this regulation adopts a "minimum rate of return" of 4 percent, on payments made by the participant. Otherwise, we do not anticipate any additional savings or costs associated with the adoption of this regulation.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Each participant will enter into a participation agreement which sets out guidelines to participate in the Kentucky Educational Savings Plan Trust program. Under the participation agreement, if a participant decides to: (1) delay or to use benefits; (2) extend, increase or decrease payments; (3) debit or charge a checking or savings account for payments; (4) substitute a beneficiary; (5) cancel or terminate a participation agreement; or (6) withhold payments from payroll, then a participant shall complete and forward to the trust the required notice or notices. We envision no increase in reporting, but some additional paperwork burden associated with the responsibilities of a participant.

(2) Effects on the promulgating administrative body: The trust is responsible for recordkeeping and enforcing the obligations under the terms and conditions of the participation agreement. The trust imposes an administration fee under certain conditions and guarantees a 4 percent "minimum rate of return" on a participant's payments. The proposed regulation defines the administrative fee charged and a "minimum rate of return" guaranteed to a participant, none of which should have any significant effect on the trust. There will be no change in investing a participant's payments in the program fund, nor will there be any changes in reporting and paperwork requirements. The net affect on the administrative agency in adopting this proposed regulation is expected to be negligible.

(a) Direct and indirect costs or savings: The Kentucky Educational Savings Plan Trust program is budgeted $280,000, for fiscal year 1989-90. The administrative fee is commensurate with the trust's costs, i.e., processing the required paperwork for cancellation or substitution of a beneficiary, and the guaranteed minimum rate of return is below the anticipated rate of return on the payments. Otherwise, we do not anticipate any additional costs or savings associated with this regulation.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The trust is responsible for responding to any notice or notices completed and submitted by a participant. We envision no increase in reporting, but some additional paperwork burden

associated with responsibility of the trust.
(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on any state or local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Pursuant to KRS 164A.325(10), the Kentucky Educational Savings Plan Trust's Board may promulgate regulations for the administration of the trust. Pursuant to this statutory language, the board is establishing general rules for the administration of the trust. There are no other alternative methods by which these regulations can be established.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed administrative regulation.
(a) Necessity of proposed regulation if in conflict: See above.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering was not applied because the concept of tiering would require the establishment of a different classification among program participants and beneficiaries. The proposed regulation adopts the definitions of words and terms, and does not impose a burden or a restriction on a participant, but promotes the maximum benefits to all participants and beneficiaries on an equal basis.

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:030. Eligibility of beneficiary and participant.

RELATES TO: KRS 164A.330(4)
STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10), 164A.380
NECESSITY AND FUNCTION: KRS 164A.380 provides that this Act shall be construed liberally in order to effectuate its legislative intent and the powers granted shall be broadly interpreted to effectuate such intent and purposes. KRS 164A.330(4) provides that a beneficiary in a participation agreement may be designated from date of birth to age fifteen (15). This regulation defines the term "Kentucky ties", establishes the eligibility criteria for a beneficiary and a participant and the proof of age required for a beneficiary to participate in the participation agreement.

Section 1. Definition. (1) "Beneficiary" (as defined in KRS 164A.305).
(2) "Designation date" shall mean the date on which each beneficiary is eligible to be designated in a participation agreement.
(3) "Kentucky ties" shall mean participants or beneficiaries who have contacts or ties with the Commonwealth, such as current or former residence, or employment in the Commonwealth, or family members with current or former residence in the Commonwealth.
(4) "Participant" (as defined in KRS 164A.305).
(5) "Participation agreement" (as defined in KRS 164A.305).
(6) "Trust" (as defined in KRS 164A.305).

Section 2. Beneficiary Eligibility. A beneficiary may be a resident of any state who, on the designation date, is less than fifteen (15) years old. Either a participant or a beneficiary shall have "Kentucky ties".

Section 3. Proof of Age. A participant shall, on signing a participation agreement, provide the trust with proof of the beneficiary's age, in the form of a birth certificate or such other record as the trust may require.

Section 4. Participant Eligibility. A participant may be a resident of any state who, on signing the participation agreement, has attained the age of eighteen (18). Either a participant or a beneficiary shall have "Kentucky ties".

L. ROGERS WELLS, JR., Chairman
APPROVED BY AGENCY: November 14, 1989
FILED WITH LRC: November 28, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 9 a.m. in Room 207, Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, 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: Matt Wilson, Executive Director, Kentucky Educational Savings Plan Trust, 318 Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Matt Wilson
(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Educational Savings Plan Trust Program as authorized pursuant to KRS 164A.300 through 164A.380. Qualifying participants or beneficiaries would be those who have "Kentucky ties", and beneficiaries who have not attained the age of 15. Aside from potential beneficiaries outside of the Commonwealth of Kentucky who have "Kentucky ties", there will be 812,000 children in the Commonwealth by 1990, under the age of 15 who are potential beneficiaries. The extent of those who will be participants and beneficiaries under the program are unknown.
(a) Direct and indirect costs or savings to those affected: The purpose of the legislation is to give participants an opportunity to fund future higher education needs for beneficiaries. This regulation establishes the eligibility criteria for a beneficiary and a participant and

the proof of age required for a beneficiary to participate in a participation agreement. There are no additional anticipated savings or costs associated with the adoption of this regulation.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Each participant will enter into a participation agreement which sets out guidelines to participate in the Kentucky Educational Savings Plan Trust program. A participant will be required to provide the trust with proof of age of a beneficiary. We envision no increase in reporting, but some additional paperwork burden associated with the responsibilities of a participant.

(2) Effects on the promulgating administrative body: The trust is responsible for recordkeeping and monitoring the eligibility criteria of a participant and a beneficiary. The net affect on the administrative agency in adopting this proposed regulation is expected to be negligible.

(a) Direct and indirect costs or savings: The Kentucky Educational Savings Plan Trust program is budgeted $280,000, for fiscal year 1989-90. We do not anticipate any additional costs or savings associated with this regulation.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: We envision no increase in reporting, but some additional paperwork burden associated with responsibilities of the trust, insuring that eligibility criteria of a participant and a beneficiary are met.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on any state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Pursuant to KRS 164A.325(10), the Kentucky Educational Savings Plan Trust's Board may promulgate regulations for the administration of the trust. Pursuant to this statutory language, the board is establishing general rules for the administration of the trust. There are no other alternative methods by which these regulations can be established.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: See above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied because the concept of tiering would require the establishment of different classification among program participants and beneficiaries. The proposed regulation adopts minimum eligibility criteria for a participant and a beneficiary, and does not impose a burden or a restriction on a participant, but promotes the maximum benefits to all participants and beneficiaries on an equal basis. All participants who are eligible to participate in the Kentucky Educational Savings Plan Trust program may enter into a participation agreement with the trust, as long as a participant and a beneficiary meets the eligibility requirements.

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:040. Residency classification for tuition purposes.

RELATES TO: KRS 164A.305(15), (16), 164A.330(9)
STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10)
NECESSITY AND FUNCTION: KRS 164A.305(15) provides that "vested participation agreement" means a participation agreement which has been in full force and effect during the vestment period without default. KRS 164A.305(16) provides that "vestment period" means eight (8) continuous years of residency in the Commonwealth while participating in the trust. KRS 164A.330(9) requires that each participation agreement shall provide that for a vested participation agreement, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky prior to enrollment in any other educational institution. This regulation is necessary not only to clarify, interpret and to establish the standards for residency of a beneficiary for tuition purposes, who would not otherwise be classified as a resident except for participating in the trust, but to establish proof of residency of a beneficiary.

Section 1. Definitions. (1) "Beneficiary" (as defined in KRS 164A.305).

(2) "Institution of higher education" or "institution" (as defined in KRS 164A.305).

(3) "Trust" (as defined in KRS 164A.305).

(4) "Vested participation agreement" (as defined in KRS 164A.305).

(5) "Vestment period" (as defined in KRS 164A.305).

Section 2. Residency. To be classified as a resident for tuition purposes, a beneficiary who has a vested participation agreement shall be considered a resident of the Commonwealth if the beneficiary has been a resident during the vestment period and enrolls in an institution of higher education in Kentucky prior to enrollment in any institution outside the Commonwealth.

Section 3. Proof of Residency. The beneficiary shall, on enrolling in an institution, provide the trust with proof of residency, in the form of school transcripts from a school or schools in the Commonwealth or such other records as the trust may require.

L. ROGERS WELLS, JR., Chairman
APPROVED BY AGENCY: November 14, 1989
FILED WITH LRC: November 28, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 9 a.m. in Room 207, Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, 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: Matt Wilson, Executive Director, Kentucky Educational Savings Plan Trust, 318 Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Matt Wilson

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Educational Savings Plan Trust Program as authorized pursuant to KRS 164A.300 through 164A.380. Qualifying participants or beneficiaries would be those who have "Kentucky ties", and beneficiaries who have not attained the age of 15. Aside from potential beneficiaries outside of the Commonwealth of Kentucky who have "Kentucky ties", there will be 812,000 children in the Commonwealth by 1990, under the age of 15 who are potential beneficiaries. The extent of those who will be participants and beneficiaries under the program are unknown.

(a) Direct and indirect costs or savings to those affected: The purpose of the legislation is to give participants an opportunity to fund future higher education needs for beneficiaries. This regulation not only clarifies, interprets and establishes the standards for residency of a beneficiary for tuition purposes, who would not otherwise be classified as a resident except for participating in the trust, but to establish proof of residency of a beneficiary. There are no additional savings or costs associated with the adoption of this regulation.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Each participant will enter into a participation agreement which sets out guidelines to participate in the Kentucky Educational Savings Plan Trust program. A beneficiary will be required to provide the institution of higher education with proof of residency for tuition purposes. We envision no increase in reporting, but some additional paperwork burden associated with the responsibilities of a beneficiary.

(2) Effects on the promulgating administrative body: The trust is responsible for recordkeeping and monitoring the eligibility criteria of a participant and a beneficiary. The trust will not be effected by the requirement that a beneficiary provide the institution of higher education with proof of residency for tuition purposes.

(a) Direct and indirect costs or savings: The Kentucky Educational Savings Plan Trust program is budgeted $280,000, for fiscal year 1989-90. We do not anticipate any additional costs or savings associated with this regulation.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This regulation requires a beneficiary to provide the institution of higher education with proof of residency for tuition purposes. We envision no increase in reporting, but some additional paperwork burden associated with responsibilities of the trust.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on any state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Pursuant to KRS 164A.325(10), the Kentucky Educational Savings Plan Trust's Board may promulgate regulations for the administration of the trust. Pursuant to this statutory language, the board is establishing general rules for the administration of the trust. There are no other alternative methods by which these regulations can be established.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: See above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied because the concept of tiering would require the establishment of a different classification among program participants and beneficiaries. The proposed regulation adopts minimum standards for residency of a beneficiary for tuition purposes, and does not impose a different burden or restriction on beneficiaries, but promotes the maximum benefits to all beneficiaries on an equal basis.

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:050. Substitution of a beneficiary.

RELATES TO: KRS 164A.325(6), 164A.330(7), (8), 164A.340

STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10), 164A.380

NECESSITY AND FUNCTION: KRS 164A.330(7), (8) and 164A.340 establishes the statutory framework for the substitution of a beneficiary, and KRS 164A.325(6) provides, in pertinent part, that the trust may promulgate, impose and collect administrative fees and charges in connection with the transactions of the trust. KRS 164A.340 provides, in pertinent part, for the adjustment of payments or benefits in the event that a substituted beneficiary is eligible for enrollment at an institution on a date earlier than the original beneficiary. This regulation establishes the notice provision for substitution of a beneficiary and administrative fee in the event of multiple substitutions. In addition, this regulation is necessary to

clarify and establish, respectively, the obligations of the participant and the trust in the event that the substituted beneficiary is older or younger than the original.

Section 1. Definitions. (1) "Administrative fee" shall mean the fee charged by the trust on cancellation or termination, which is the lesser of two (2) percent of the amount refunded or twenty-five (25) dollars, or for multiple substitution of beneficiaries, twenty-five (25) dollars.

(2) "Beneficiary" (as defined in KRS 164A.305).

(3) "Benefits" (as defined in KRS 164A.305).

(4) "Endowment fund" (as defined in KRS 164A.305).

(5) "Institution" (as defined in KRS 164A.305).

(6) "Notice to substitute beneficiary" shall mean the form prescribed by the trust which a participant completes to substitute a beneficiary.

(7) "Participant" (as defined in KRS 164A.305).

(8) "Participation agreement" (as defined in KRS 164A.305).

(9) "Program fund" (as defined in KRS 164A.305).

(10) "Trust" (as defined in KRS 164A.305).

Section 2. Substitution. A participant may substitute a beneficiary at any time. If a participant desires to substitute the beneficiary, then a participant shall give written notice to the trust, by submitting a "notice to substitute beneficiary".

(1) Younger beneficiary. If a substituted beneficiary is eligible for enrollment at an institution on a date later than the original beneficiary, a participant shall give written notice to the trust, not less than 180 days before the date of the original beneficiary's admission to the institution.

(2) Older beneficiary. If a substituted beneficiary is eligible for enrollment at an institution on a date earlier than the original beneficiary, a participant shall give written notice to the trust, not less than 180 days before the date of original beneficiary's eligibility for enrollment at an institution. Either a participant shall pay to the trust a reasonable fee or cost to place a substituted beneficiary on a basis of actuarial parity with the original beneficiary, or the benefits shall be paid at a reduced rate equal to the rate of return generated by the program fund and endowment fund during such lesser time period.

(3) Multiple. If a participant substitutes a beneficiary under a participation agreement more than twice, then the trust shall require the participant to pay the administrative fee.

L. ROGERS WELLS, JR., Chairman

APPROVED BY AGENCY: November 14, 1989

FILED WITH LRC: November 28, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 9 a.m. in Room 207, Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, 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: Matt Wilson, Executive Director, Kentucky Educational Savings Plan Trust, 318 Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Matt Wilson

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Educational Savings Plan Trust Program as authorized pursuant to KRS 164A.300 through 164A.380. Qualifying participants or beneficiaries would be those who have "Kentucky ties", and beneficiaries who have not attained the age of 15. Aside from potential beneficiaries outside of the Commonwealth of Kentucky who have "Kentucky ties", there will be 812,000 children in the Commonwealth by 1990, under the age of 15 who are potential beneficiaries. The extent of those who will be participants and beneficiaries under the program are unknown.

(a) Direct and indirect costs or savings to those affected: The purpose of the legislation is to give participants an opportunity to fund future higher education needs for beneficiaries. In nearly all respects, the proposed regulation adopts certain requirements and notices imposed on a participant in the event of substitution of a beneficiary, including older or younger; and the proposed regulation adopts an administrative fee in the event of multiple substitution. To defray the costs in administering the trust, a $25 administrative fee is required under certain conditions for multiple substitution of beneficiaries, otherwise no fee is charged. If a participant substitutes an older beneficiary, then a participant must adjust the account by paying to the trust a reasonable fee or cost to place a beneficiary on a basis of actuarial parity or the benefits will be paid by the trust at a reduced rate. Otherwise, there are no additional anticipated savings or costs associated with the adoption of this regulation.

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: Each participant will enter into a participation agreement which sets out guidelines to participate in the Kentucky Educational Savings Plan Trust program. A participant will be required to provide the trust with notice of substitution of a beneficiary, including older or younger. We envision no increase in reporting, but some additional paperwork burden associated with the responsibilities of a participant.

(2) Effects on the promulgating administrative body: The trust is responsible for recordkeeping and responding to a participant when requested to substitute a beneficiary, including older or younger. The net effect of the administrative agency in adopting this proposed regulation is

expected to be negligible.

(a) Direct and indirect costs or savings: The Kentucky Educational Savings Plan Trust program is budgeted $280,000, for fiscal year 1989-90. The administrative fee is commensurate with the trust costs (i.e., processing the required paperwork for multiple substitution of a beneficiary). We do not anticipate any additional costs or savings associated with this regulation.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: A participant will be required to provide the trust with notice of a substitution of a beneficiary. We envision no increase in reporting, but some additional paperwork burden associated with responsibilities of the trust.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on any state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Pursuant to KRS 164A.325(10), the Kentucky Educational Savings Plan Trust's Board may promulgate regulations for the administration of the trust. Pursuant to this statutory language, the board is establishing general rules for the administration of the trust. There are no other alternative methods by which these regulations can be established.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: See above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied because the concept of tiering would require the establishment of a different classification among program participants and beneficiaries. The proposed regulation adopts minimum requirements for a participant to substitute a beneficiary, including older or younger, and does not impose a different burden or restriction on participants, but promotes the maximum benefits to all beneficiaries on an equal basis.

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:060. Ownership and refund of investment income after partial utilization of benefits.

RELATES TO: KRS 164A.350(1), (2)

STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10)

NECESSITY AND FUNCTION: KRS 164A.350(1) specifies the owner of all payments and investment income of the program fund before and after the date of payments for higher education costs. KRS 164A.325(2) provides, in pertinent part, that in the event the participation agreement is terminated after partial utilization of benefits for the beneficiary, then an administrative refund fee will be charged on a pro rata basis. This regulation is necessary to clarify the ownership and refund rights of the unused investment income of the program fund after partial utilization of benefits and the administrative refund fee charged by the trust.

Section 1. Definitions. (1) "Administrative fee" shall mean the fee charged by the trust on cancellation or termination, which is the lesser of two (2) percent of the amount refunded or twenty-five (25) dollars, or for multiple substitution of beneficiaries, twenty-five (25) dollars.

(2) "Beneficiary" (as defined in KRS 164A.305).

(3) "Benefits" (as defined in KRS 164A.305).

(4) "Investment income" means the earnings from the investments in the program fund.

(5) "Participant" (as defined in KRS 164A.305).

(6) "Participation agreement" (as defined in KRS 164A.305).

(7) "Payments" shall mean the money paid by the participant to the trust under the participation agreement.

(8) "Trust" (as defined in KRS 164A.305).

Section 2. After Partial Utilization. (1) Ownership. If a participation agreement is terminated after partial utilization of benefits, the participant retains ownership of all unused payments, and the trust shall hold in trust for the beneficiary, all unused investment income accrued on all the payments.

(2) Refund. If a participation agreement is cancelled or terminated after partial payment of benefits, the participant is entitled to the balance of all payments, and the beneficiary is entitled to the balance of the investment income, and each shall pay an administrative fee on a pro rata basis.

L. ROGERS WELLS, JR., Chairman

APPROVED BY AGENCY: November 14, 1989

FILED WITH LRC: November 28, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 9 a.m. in Room 207, Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, 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: Matt Wilson, Executive Director, Kentucky Educational Savings Plan Trust, 318 Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Matt Wilson

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Educational Savings Plan Trust Program as authorized pursuant to KRS 164A.300 through 164A.380. Qualifying participants or beneficiaries would be those who have "Kentucky ties", and beneficiaries who have not attained the age of 15. Aside from potential beneficiaries outside of the Commonwealth of Kentucky who have "Kentucky ties", there will be 812,000 children in the Commonwealth by 1990, under the age of 15 who are potential beneficiaries. The extent of those who will be participants and beneficiaries under the program are unknown.

(a) Direct and indirect costs or savings to those affected: The purpose of the legislation is to give participants an opportunity to fund future higher education needs for beneficiaries. In nearly all respects, the proposed regulation adopts the minimum requirements imposed on a participant in the event of termination after partial utilization of benefits; and the proposed regulation interprets the ownership and refund rights of the unused investment income of the program fund after partial utilization of benefits. This proposed regulation requires a participant and a beneficiary to pay an administrative fee, $25 or two percent of the amount refunded whichever is less, on a pro rata basis. Otherwise, there are no additional anticipated savings or costs associated with the adoption of this regulation.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Each participant will enter into a participation agreement which sets out guidelines to participate in the Kentucky Educational Savings Plan Trust program. A participant will provide the trust with notice of termination or cancellation. We envision no increase in reporting, but some additional paperwork burden associated with the adoption of this regulation.

(2) Effects on the promulgating administrative body: The trust is responsible for recordkeeping and responding to a participant when requested to refund unused investment income after partial utilization of benefits. The net effect of the administrative agency in adopting this proposed regulation is expected to be negligible.

(a) Direct and indirect costs or savings: The Kentucky Educational Savings Plan Trust program is budgeted $280,000, for fiscal year 1989-90. The administrative fee is commensurate with the trust costs (i.e., processing the required paperwork for the refund of unused investment income). We do not anticipate any additional costs or savings associated with this regulation.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The trust will be required to respond to a participant's notice to cancel or terminate. We envision no increase in reporting, but some additional paperwork burden associated with responsibilities of the trust.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on any state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Pursuant to KRS 164A.325(10), the Kentucky Educational Savings Plan Trust's Board may promulgate regulations for the administration of the trust. Pursuant to this statutory language, the board is establishing general rules for the administration of the trust. There are no other alternative methods by which these regulations can be established.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: See above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied because the concept of tiering would require the establishment of a different classification among program participants and beneficiaries. The proposed regulation adopts a participant's and a beneficiary's ownership and refund rights in the event of cancellation or termination after partial utilization of benefits, and places no burden or restriction on a participant, but promotes the maximum benefits to all beneficiaries and participants on an equal basis.

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:070. Payment of refund and rate of return after notice of termination.

RELATES TO: KRS 164A.345(1)

STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10)

NECESSITY AND FUNCTION: KRS 164A.345(1) provides, in pertinent part, that any participant may cancel a participation agreement at will and specifies the amount of refund the participant is entitled to at various stages, including an administrative fee to be charged by the trust. This regulation is necessary to establish a refund payment provision and the rate of return after notice of termination.

Section 1. Definitions. (1) "Account" shall denote the account in the program fund established and maintained under the trust for a beneficiary.

(2) "Hardship" or "emergency" shall mean those circumstances and conditions of a sudden nature, including catastrophic illness, which deprive the participant or his dependent from the basic necessities or comforts of life or proper health care.

(3) "Minimum rate of return" shall mean the minimum earnings of four (4) percent guaranteed by the trust on payments made by the participant.

(4) "Participant" (as defined in KRS 164A.305).

(5) "Participation agreement" (as defined in KRS 164A.305).

(6) "Program fund" (as defined in KRS 164A.305).
(7) "Trust" (as defined in KRS 164A.305).

Section 2. Payment of Refund. (1) Notice and method. On a participant terminating or cancelling the participation agreement, the trust shall refund the money from the account in two (2) equal annual payments, commencing sixty (60) days from the date of termination or cancellation.
(2) Hardship or emergency. If a participant terminates or cancels the participation agreement under conditions of hardship or emergency, then the trust shall immediately refund all money from the account, within sixty (60) days after notice.

Section 3. Rate of Return After Notification. After notice of termination, all money in the program fund shall draw interest at a minimum rate of return until paid.

L. ROGERS WELLS, JR., Chairman
APPROVED BY AGENCY: November 14, 1989
FILED WITH LRC: November 28, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 9 a.m. in Room 207, Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, 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: Matt Wilson, Executive Director, Kentucky Educational Savings Plan Trust, 318 Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Matt Wilson
(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Educational Savings Plan Trust Program as authorized pursuant to KRS 164A.300 through 164A.380. Qualifying participants or beneficiaries would be those who have "Kentucky ties", and beneficiaries who have not attained the age of 15. Aside from potential beneficiaries outside of the Commonwealth of Kentucky who have "Kentucky ties", there will be 812,000 children in the Commonwealth by 1990, under the age of 15 who are potential beneficiaries. The extent of those who will be participants and beneficiaries under the program are unknown.
(a) Direct and indirect costs or savings to those affected: The purpose of the legislation is to give participants an opportunity to fund future higher education needs for beneficiaries. This regulation establishes a refund payment provision and the rate of return after notice of termination. There are no additional savings or costs associated with the adoption of this regulation.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Each participant will enter into a participation agreement which sets out guidelines to participate in the Kentucky Educational Savings Plan Trust program. A participant will be required to provide the trust with notice to terminate the participation agreement. We envision no increase in reporting, but some additional paperwork burden associated with the responsibilities of a participant.
(2) Effects on the promulgating administrative body: The trust is responsible for recordkeeping and responding to a participant in the event of notice of termination. The net affect on the administrative agency in adopting this proposed regulation is expected to be negligible.
(a) Direct and indirect costs or savings: The Kentucky Educational Savings Plan Trust program is budgeted $280,000, for fiscal year 1989-90. The reduction in the rate of return after notification to terminate should be commensurate with the costs (i.e., processing the required paperwork to terminate the participation agreement). We do not anticipate any additional costs or savings associated with this regulation.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: After notice of termination the trust is required to refund a participant's money under certain terms and conditions. We envision no increase in reporting, but some additional paperwork burden associated with responsibilities of the trust.
(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on any state or local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Pursuant to KRS 164A.325(10), the Kentucky Educational Savings Plan Trust's Board may promulgate regulations for the administration of the trust. Pursuant to this statutory language, the board is establishing general rules for the administration of the trust. There are no other alternative methods by which these regulations can be established.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed administrative regulation.
(a) Necessity of proposed regulation if in conflict: See above.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering was not applied because the concept of tiering would require the establishment of a different classification among program participants and beneficiaries. The proposed regulation adopts

the minimum requirements of a refund, and establishes the rate of return on the participant's payments after notice of termination. This regulation imposes no burden or restriction on a participant, but promotes the maximum benefits to all participants and beneficiaries on an equal basis.

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:080. Benefits payable from the program fund.

RELATES TO: KRS 164A.310(8), 164A.330(5), 164A.335(3)
STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10)
NECESSITY AND FUNCTION: KRS 164A.310(8), 164.330(5) and 164A.335(3) establishes the statutory framework for payment of benefits to an institution from the program fund. This regulation is necessary to establish the maximum benefits payable in any academic period, the duration of the payments, the payment of benefits for a beneficiary residing off campus and the notice provisions in the event of a refund of the payments for nonuse or unused benefits from the program fund.

Section 1. Definitions. (1) "Academic period" shall mean one-eighth (1/8) of eight (8) semesters or one-twelfth (1/12) of twelve (12) quarters at a four (4) year institution; one-fourth (1/4) of four (4) semesters or one-sixth (1/6) of six (6) quarters at a two (2) year institution; or an equivalent period for a vocational technical institution.
(2) "Account" shall denote the account in the program fund established and maintained under the trust for a beneficiary.
(3) "Administrative fee" shall mean the fee charged by the trust on cancellation or termination, which is the lesser of two (2) percent of the amount refunded or twenty-five (25) dollars.
(4) "Beneficiary" (as defined in KRS 164A.305).
(5) "Benefits" (as defined in KRS 164A.305).
(6) "Endowment fund" (as defined in KRS 164A.305).
(7) "Higher education costs" (as defined in KRS 164A.305).
(8) "Institution" (as defined in KRS 164A.305).
(9) "Investment income" shall mean the earnings from the investments in the program fund.
(10) "Notice to delay benefits under participation agreement" shall mean the form prescribed by the trust which a participant completes to extend payments under a participation agreement beyond the beneficiary's age of eighteen (18).
(11) "Participant" (as defined in KRS 164A.305).
(12) "Payments" shall denote the money paid by the participant to the trust under the participation agreement.
(13) "Program fund" (as defined in KRS 164A.305).
(14) "Trust" (as defined in KRS 164A.305).

Section 2. Maximum Benefits. Each payment of benefits made to the institution may not exceed the beneficiary's entitlement in the program fund in any academic period, as such entitlement bears to the total semesters or quarters of the institution attended by the beneficiary.

Section 3. Duration. The payment of benefits shall begin on a beneficiary's enrollment in an institution and continue throughout each academic period or until such benefits have been exhausted, whichever first occurs.

Section 4. Beneficiary Residing Off Campus. If a beneficiary resides off campus, then the trust shall pay to the beneficiary, in addition to the amounts paid to the institution, an amount equal to the cost of lodging and meal ticket for an academic semester as established by said institution for on-campus students. However, the amounts paid to the institution and the beneficiary shall not exceed the amount payable in any academic period from the program fund and the endowment fund or exceed the higher education costs for that institution.

Section 5. Nonenrollment. If a beneficiary does not enroll in an institution after he attains the age of eighteen (18), or a participant does not provide the trust with a "notice to delay benefits under participation agreement", then the trust shall refund the payments and investment income on the payments in accordance with the Act.

Section 6. Unused Benefits. (1) During academic period. If a beneficiary's higher education costs are less than the benefits due for any academic period, then that portion of the unused benefits shall accumulate to the beneficiary's account. The unused benefits plus the beneficiary's entitlement in the program fund in any academic period may be paid to the institution for the beneficiary in the next succeeding academic period.
(2) After graduation. If the beneficiary graduates from an institution, and a balance in the beneficiary's account exists, then the trust shall pay the balance of the payments to the participant, and the balance of the investment income to the beneficiary. The trust shall make the payment from the program fund within sixty (60) days from the date of the beneficiary's graduation, and the administrative fee shall be deducted from the payment in accordance with the provisions of the Act.

L. ROGERS WELLS, JR., Chairman
APPROVED BY AGENCY: November 14, 1989
FILED WITH LRC: November 28, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 9 a.m. in Room 207, Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, 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: Matt Wilson, Executive Director, Kentucky Educational Savings Plan Trust, 318 Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Matt Wilson

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Educational Savings Plan Trust Program as authorized pursuant to KRS 164A.300 through 164A.380. Qualifying participants or beneficiaries would be those who have "Kentucky ties", and beneficiaries who have not attained the age of 15. Aside from potential beneficiaries outside of the Commonwealth of Kentucky who have "Kentucky ties", there will be 812,000 children in the Commonwealth by 1990, under the age of 15 who are potential beneficiaries. The extent of those who will be participants and beneficiaries under the program are unknown.

(a) Direct and indirect costs or savings to those affected: The purpose of the legislation is to give participants an opportunity to fund future higher education needs for beneficiaries. This regulation establishes the maximum criteria in which the benefits are payable for a beneficiary, including a refund of the payments for nonuse or unused benefits from the program fund. If a beneficiary does not enroll in an institution, an administrative refund fee, $25 or 2 percent of the amount refunded whichever is lesser, will be charged a participant. In the event that a beneficiary does not use all of the benefits, then the trust will refund the benefits to a participant and a beneficiary and charge an administration fee on an equal basis. Otherwise, there are no additional savings or costs associated with the adoption of this regulation.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Each participant will enter into a participation agreement which sets out guidelines to participate in the Kentucky Educational Savings Plan Trust program. A participant will be required to provide the trust with notice to delay any payment of benefits from the program fund. We envision no increase in reporting, but some additional paperwork burden associated with the responsibilities of a participant.

(2) Effects on the promulgating administrative body: The trust is responsible for recordkeeping and keeping a participant informed as to the account balance in the program fund. The net affect on the administrative agency in adopting this proposed regulation is expected to be negligible.

(a) Direct and indirect costs or savings: The Kentucky Educational Savings Plan Trust program is budgeted $280,000, for fiscal year 1989-90. The trust will make payment of benefits to an institution, and any unused benefits will be refunded to a participant and a beneficiary. Otherwise, we do not anticipate any additional costs for savings associated with this regulation.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The trust is required to make payments of benefits from the program fund to an institution, and return any unused benefits to a participant and a beneficiary. We envision no increase in reporting, but some additional paperwork burden associated with responsibilities of the trust.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on any state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Pursuant to KRS 164A.325(10), the Kentucky Educational Savings Plan Trust's Board may promulgate regulations for the administration of the trust. Pursuant to this statutory language, the board is establishing general rules for the administration of the trust. There are no other alternative methods by which these regulations can be established.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: See above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied because the concept of tiering would require the establishment of different classification among program participants and beneficiaries. The proposed regulation adopts the maximum criteria for benefits payable to an institution for a beneficiary and the notice provisions in the event of a refund of the payment for nonuse or unused benefits from the program fund. This regulation imposes no burden or restriction on a participant or a beneficiary, but promotes the maximum benefits to all participants and beneficiaries on an equal basis.

FINANCE & ADMINISTRATION CABINET
Kentucky Educational Savings Plan Trust

200 KAR 16:090. Benefits payable from the endowment fund.

RELATES TO: KRS 164A.335(2), (3)

STATUTORY AUTHORITY: KRS Chapter 13A, 164A.325(10), 164A.380

NECESSITY AND FUNCTION: KRS 164A.335(2) and (3) establish the statutory framework for the endowment fund and separates the fund into two (2) separate income funds, identified as the general unrestricted endowment fund and the restricted endowment income fund. KRS 164A.335(3) provides, in pertinent part, a beneficiary's pro rata interest in the investment income derived by the endowment fund in any year in which benefits are paid under the participation agreement to the institution. This regulation is necessary to not only clarify a beneficiary's entitlement to the general

unrestricted endowment income and the restricted endowment income, if any, as established by the Act, but to establish the beneficiary's entitlement to the unused general unrestricted endowment income in any trust year where there is a partial distribution or no distribution of this income.

Section 1. Definitions. (1) "Academic period" shall mean one-eighth (1/8) of eight (8) semesters or one-twelfth (1/12) of twelve (12) quarters at a four (4) year institution; one-fourth (1/4) of four (4) semesters or one-sixth (1/6) of six (6) quarters at a two (2) year institution; or an equivalent period for a vocational technical institution.

(2) "Beneficiary" (as defined in KRS 164A.305).

(3) "Benefits" (as defined in KRS 164A.305).

(4) "Endowment fund" (as defined in KRS 164A.305).

(5) "General unrestricted endowment income" shall mean the investment income derived from the endowment fund which benefits are paid for a beneficiary attending an institution in the Commonwealth.

(6) "Higher educational costs" (as defined in KRS 164A.305).

(7) "Institution" (as defined in KRS 164A.305).

(8) "Investment income" shall mean the earnings from the investments in the endowment fund.

(9) "Participant" (as defined in KRS 164A.305).

(10) "Payments" shall denote the money paid by the participant to the trust under the participation agreement.

(11) "Program fund" (as defined in KRS 164A.305).

(12) "Restricted endowment income" shall mean the investment income from the endowment fund which may be distributed as benefits only to a particular group or class of beneficiaries, such as the beneficiaries of participants who are employees or members of a particular organization.

(13) "Trust" (as defined in KRS 164A.305).

(14) "Trust year" means the fiscal year beginning July 1 and ending the following June 30 of each year for purposes of the calculation of benefits.

Section 2. General Unrestricted Endowment Income. (1) Each beneficiary attending a Kentucky institution is entitled to receive a pro rata interest in the general unrestricted endowment income in any year in which benefits are paid to an institution. The amounts paid from the general unrestricted endowment income to an institution shall be in the ratio of the payments made by each participant and investment income earned to date thereon bears to the principal amount of all money, funds and securities then held in the program fund.

(2) When the trust makes a payment from the program fund, the trust shall also simultaneously pay from the general unrestricted endowment income, such proportionate amount to the Kentucky institution, and such payment shall be used for payment of higher education costs of the beneficiary. Each payment made to the institution shall not exceed the beneficiary's entitlement in the general unrestricted endowment income in any academic period, as such academic period bears to the total semesters or quarters to that institution.

Section 3. Restricted Endowment Income. If the beneficiary qualifies for benefits from the restricted endowment income of the endowment fund, then the beneficiary shall receive benefits in accordance with the terms and conditions agreed to by the trust and the donor. The benefits from the restricted endowment income are calculated without regards to the general unrestricted endowment income, and are in addition to the beneficiary's pro rata share of benefits from the general unrestricted endowment income.

Section 4. Kentucky Institution. A beneficiary who does not attend a Kentucky institution, shall have no right to the endowment fund.

Section 5. Unused General Unrestricted Endowment Income in Trust Year. If there is a partial distribution of the general unrestricted endowment income in any trust year, then the unused portion shall accumulate and be a part of the general unrestricted endowment income for the succeeding trust year. If there is no distribution of benefits from the general unrestricted endowment income in any trust year, then the unused income for that year shall be added to, and made a part of the principal of the general unrestricted endowment fund.

L. ROGERS WELLS, JR., Chairman

APPROVED BY AGENCY: November 14, 1989

FILED WITH LRC: November 28, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1990, at 9 a.m. in Room 207, Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1990, 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: Matt Wilson, Executive Director, Kentucky Educational Savings Plan Trust, 318 Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Matt Wilson

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Educational Savings Plan Trust Program as authorized pursuant to KRS 164A.300 through 164A.380. Qualifying participants or beneficiaries would be those who have "Kentucky ties", and beneficiaries who have not attained the age of 15. Aside from potential beneficiaries outside of the Commonwealth of Kentucky who have "Kentucky ties", there will be 812,000 children in the Commonwealth by 1990, under the age of 15 who are potential beneficiaries. The extent of those who will be

participants and beneficiaries under the program are unknown.

(a) Direct and indirect costs or savings to those affected: The purpose of the legislation is to give participants an opportunity to fund future higher education needs for beneficiaries. This regulation is not only to clarify a beneficiary's entitlement to the general unrestricted endowment income and the restricted endowment income, but to establish the beneficiary's entitlement to the unused general unrestricted endowment income in any trust year under certain conditions. There are no additional savings or costs associated with the adoption of this regulation.

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: Each participant will enter into a participation agreement which sets out guidelines to participate in the Kentucky Educational Savings Plan Trust program. No additional paperwork or reporting requirements are anticipated as a result of this regulation.

(2) Effects on the promulgating administrative body: The trust is responsible for recordkeeping and keeping a participant informed as to a beneficiary's potential entitlement to the endowment fund, if any. The net affect on the administrative agency in adopting this proposed regulation is expected to be negligible.

(a) Direct and indirect costs or savings: The Kentucky Educational Savings Plan Trust program is budgeted $280,000, for fiscal year 1989-90. The trust is required to make payment of unrestricted and restricted endowment income benefits, if applicable, and if there is no distribution of benefits from the general unrestricted endowment income in any trust year, then the unused income for that year shall be added to, and made a part of the principle of the general unrestricted endowment income. Otherwise, there are no additional anticipated costs or savings associated with this regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The trust is responsible for recordkeeping and paying of unrestricted and restricted endowment income benefits to a Kentucky institution for higher education costs of a beneficiary. We envision no increase in reporting, but some additional paperwork burden associated with responsibilities of the trust.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on any state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Pursuant to KRS 164A.325(10), the Kentucky Educational Savings Plan Trust's Board may promulgate regulations for the administration of the trust. Pursuant to this statutory language, the board is establishing general rules for the administration of the trust. There are no other alternative methods by which these regulations can be established.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: See above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied because the concept of tiering would require the establishment of a different classification among program participants and beneficiaries. The proposed regulation adopts guidelines for a beneficiary's entitlement to the unused general unrestricted endowment income in any trust year where there is a partial distribution or no distribution of this income. This regulation imposes no burden or restriction on a beneficiary, but promotes the maximum benefits to all beneficiaries on an equal basis.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure

201 KAR 9:180. Ethical conduct.

RELATES TO: KRS 311.650 to 311.658, 311.990(18)

STATUTORY AUTHORITY: KRS 311.654

NECESSITY AND FUNCTION: KRS 311.654 authorizes the Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to promulgate a code of conduct governing the practice of paramedics based upon generally recognized principles of professional and ethical conduct.

Section 1. A paramedic shall be dedicated to providing competent emergency medical service with compassion and respect for human dignity.

Section 2. A paramedic shall deal honestly with patients, physicians, colleagues, and other medical professionals and strive to expose those paramedics deficient in character or competence, or who engage in fraud or deception.

Section 3. A paramedic shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.

Section 4. A paramedic shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard all information learned about the patient in the discharge of professional duties, and this information shall only be divulged by the paramedic when required by law or when authorized by the patient.

ROYCE E. DAWSON, M.D., President

APPROVED BY AGENCY: December 14, 1989

FILED WITH LRC: December 14, 1989 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 23, 1990 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 January 18, 1990, 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 paramedics practicing in the Commonwealth of Kentucky or certified to practice in Kentucky.
(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings are anticipated.
1. First year: No costs or savings anticipated.
2. Continuing costs or savings: No continued costs or savings anticipated.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Not aware of any additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: No reporting or paperwork requirements on behalf of paramedics.
(2) Effects on the promulgating administrative body: Only potential effect on the board is that it must monitor the paramedics to insure compliance with this new regulation.
(a) Direct and indirect costs or savings: Indirect costs are anticipated to include closer monitoring and investigation of violating paramedics.
1. First year: Cost cannot be adequately calculated.
2. Continuing costs or savings: Continuing costs cannot be adequately calculated.
3. Additional factors increasing or decreasing costs: Not aware of any additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: Only reporting and paperwork increase is involved with the monitoring and investigation of paramedics who violate this regulation.
(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was promulgation of no ethical standards, but board and paramedic advisory committee felt the paramedics of Kentucky needed these ethical guidelines.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not aware of any conflict, overlaps or duplication by promulgation of this new 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: These ethical guidelines are very general and are an attempt to offer guidance to the certified Kentucky paramedic.
TIERING: Was tiering applied? Yes

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

601 KAR 1:145. Reporting and paying of usage tax pursuant to a U-drive-it permit.

RELATES TO: KRS Chapters 138, 154, 186, 281
STATUTORY AUTHORITY: KRS 138.463, 186.281, 186.005, 281.600
NECESSITY AND FUNCTION: The Transportation Cabinet has the authority and responsibility to assess and collect the monthly U-drive-it usage tax. In this regulation the cabinet establishes the procedure for obtaining a vehicle identification document and for paying of the monthly usage tax.

Section 1. Payment of all applicable seat taxes imposed by KRS 186.281 shall be due and payable to the department at the time of application for the vehicle identification document (fee receipt card). Seat taxes shall be applicable to cargo-carrying vehicles operated in Kentucky to the extent of the normal passenger carrying capacity of the vehicle. At the time a U-drive-it permit holder pays to the department the annual seat tax imposed by KRS 186.281 he shall apply for a vehicle identification document for each vehicle to be operated under the U-drive-it permit in Kentucky. The application for a vehicle identification document shall be made to the Department of Vehicle Regulation, Division of Motor Carriers, on forms prescribed and furnished by the department. The application shall be accompanied by a vehicle equipment list which identifies each vehicle. For each vehicle listed for the first time on an equipment list, the applicant shall provide a copy of both front and back of either the manufacturer's certificate of origin, title or the registration of the vehicle. The vehicle identification document (fee receipt card) shall be renewed annually prior to the expiration of the vehicle's registration license plate.

Section 2. No vehicle may be operated under a U-drive-it permit until the permit holder has paid the applicable seat tax imposed by KRS 186.281 and obtained a vehicle identification document for the vehicle. When a vehicle ceases to be operated under a U-drive-it permit, the permit holder shall advise the department in writing within fifteen (15) days. The notice shall include a complete description of the vehicle including its identification number.

Section 3. A photocopy of the vehicle identification document (fee receipt card) shall at all times, be carried in the vehicle for which it was issued and shall be subject to inspection by any proper representative of the Transportation Cabinet or other law enforcement agency. A copy of the vehicle identification document shall be presented to the county clerk upon the initial registration of any vehicle being registered under a U-drive-it permit. The vehicle identification document shall be used to assess the usage tax imposed by KRS Chapter 138.

Section 4. Any holder of a U-drive-it permit who reports and pays the tax imposed by KRS 138.463 shall report the tax on a monthly basis on the forms prescribed and furnished by the department. Tax reports and payments shall be due on or before the end of the succeeding month following the period covered by the tax report. The tax reported and paid to the cabinet for any rented or leased vehicle shall be equivalent to the amount due on the fair market value of a vehicle of like kind, regardless of the terms of the rental or lease agreement. However, the tax reported and paid to the cabinet shall not be less than the amount due based on the actual terms of a rental or lease agreement.

Section 5. The U-drive-it permit holder who is eligible under KRS 138.463 to elect as to the payment of the usage tax shall make his election at the time of his application for his vehicle identification document (fee receipt card). No change in the method of payment of the usage tax shall be permitted during his term of ownership of the vehicle.

Section 6. Any holder of a U-drive-it permit with vehicles registered pursuant to an approved fleet registration allocation shall report and pay to the department the monthly usage tax at the rate imposed by KRS 138.463 on all vehicles rented from all its Kentucky locations regardless of the state of licensing of those vehicles. The U-drive it permit holder shall also license in Kentucky, pay the applicable seat tax imposed by KRS 186.281, and obtain a vehicle identification document (fee receipt card) for the number of vehicles at least equal to the number of vehicles to be registered in Kentucky by the approved allocation formula. Tax payments not timely made shall be subject to penalties and interest.

Section 7. Any U-drive-it permit holder who under the terms of KRS 154.690 claims exemption from the payment of usage taxes shall file annually with the Department of Vehicle Regulation a copy of his certificate from the Enterprise Zone Authority of Kentucky. If a U-drive-it permit holder obtains an exemption under KRS 154.690 at any time after his initial application for a U-drive-it permit, he shall be required to file a copy of the certification with the department. If any U-drive-it permit holder ceases to be certified under KRS 154.690, then he shall immediately so notify the department in writing. Any U-drive-it permit holder who loses his certificate under KRS 154.690 and who is eligible under KRS 138.463 to elect as to the payment of the usage tax shall make this election at the time he notifies the department of his loss of certification.

Section 8. If a vehicle on which the usage tax is being paid pursuant to KRS 138.463 is transferred to another party within 180 days of its registration and if less than 5,000 miles have been placed on the vehicle during its registration as a U-drive-it vehicle, then the new owner is required to pay the usage tax imposed by KRS 138.460 based on the taxable value of the vehicle as required by KRS 138.450(4)(e). In such a case, the U-drive-it permit holder shall not claim credit for any usage tax remitted for the vehicle.

Section 9. Tax records, and records of the payment thereof, shall be maintained by U-drive-it permit holders for a period as set forth in KRS 138.463(6), and shall be subject to audit or examination by proper representatives of the Transportation Cabinet.

JEROME L. LENTZ, Commissioner
MILO D. BRYANT, Secretary/Commissioner
APPROVED BY AGENCY: November 21, 1989
FILED WITH LRC: December 5, 1989 at 11 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 22, 1990 at 9:30 a.m, local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by January 17, 1990 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 January 17, 1990. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All U-drive-it permit holders in Kentucky.

(a) Direct and indirect costs or savings to those affected: With one exception this regulation is just the adoption of those sections which are being repealed in 601 KAR 1:140. The only change will be to those permit holders who lease or rent a vehicle below fair market value of that vehicle. Once this regulation is effective they will have to pay usage tax based on the fair market rental or leasing of that vehicle.

1. First year: The additional tax due from all permit holders is expected to be very slight. We suspect there are cases in which lease and rental charges at price below fair market value.

2. Continuing costs or savings: The tax due is expected to remain close to same. Small portion of total of leases will be inspected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: To compute his monthly tax reports, the permit holder will have to distinguish the vehicles leased or rented for fair market value from those priced at a lower cost.

(2) Effects on the promulgating administrative body

(a) Direct and indirect costs or savings.

1. First year: Anticipate a slight increase in usage that should be collected each year.

2. Continuing costs or savings: A slight increase in usage tax should be collected each

year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Anticipate an increase in the amount of usage tax owed.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are some companies who for whatever reason are renting or leasing vehicles below the fair market value. This is not illegal but should not deprive the road fund of the full amount of usage tax it is owed.
(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: Usage tax on other vehicles is not based on the selling price of the vehicle but rather the book value of the vehicle.
TIERING: Was tiering applied? Yes.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents

760 KAR 1:010. Acquisition and disbursement of funds.

RELATES TO: KRS 164A.560, 164A.565
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 Northern Kentucky University.

Section 1. The Board of Regents of Northern Kentucky 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 special purpose activities of Northern Kentucky 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 no official shall 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 shall be carried out by the Assistant Vice President for Business Affairs and any directors, assistant directors, accountants, and cashiers as the president may authorize in writing in accord with sound business practices.

Section 2. The accounting system of Northern Kentucky 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 custodian 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 the 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 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, or his designee, shall prepare information as is necessary for the Board of Regents of Northern Kentucky 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. HERBERT BOOTH, Chairman
APPROVED BY AGENCY: December 13, 1989
FILED WITH LRC: December 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing will be held on this regulation on January 23, 1990, at 8 a.m.. Any person who intends to attend this hearing must notify in writing at least five days before the hearing the following person: W. Michael Baker, Assistant Vice President for Business Affairs, Northern Kentucky University, Room 727A, Administrative Center, Highland Heights, Kentucky 41076. If no one notifies this agency that they wish to attend the hearing, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: W. Michael Baker
(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: Northern Kentucky 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 Northern Kentucky University for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents

760 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 Northern Kentucky University.

Section 1. Upon recommendation of the president, based upon appropriate procurement procedure, the Board of Regents of Northern Kentucky 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.

Dr. Herbert Booth, Chairman
APPROVED BY AGENCY: December 13, 1989
FILED WITH LRC: December 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing will be held on this regulation on January 23, 1990 at 8a.m..

Any person who intends to attend this hearing must notify in writing at least five days before the hearing the following person: W. Michael Baker, Assistant Vice President for Business Affairs, Northern Kentucky University, Room 727A, Administrative Center, Highland Heights, Kentucky 41076. If no one notifies this agency that they wish to attend the hearing, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: W. Michael Baker
(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: Northern Kentucky 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 Northern Kentucky University for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents

760 KAR 1:030. Purchasing; inventories; sales of surplus property; bidding procedures.

RELATES TO: KRS 164A.575
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.575 at Northern Kentucky University.

Section 1. The President of Northern Kentucky University, or his designee, 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 accordance 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 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 Northern Kentucky University, or his designee, 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 Northern Kentucky University, or his designee, shall direct the appropriate institutional officers to take and maintain inventories of plant and equipment.

Section 4. The President of Northern Kentucky University, or his designee, 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 Northern Kentucky University, or his designee, 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 Northern Kentucky 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 an 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 appropriate personnel 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, or his designee, 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 shall be fully explained, in writing, by the Vice President for Administrative and such explanation shall 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. Herbert Booth, Chairman
APPROVED BY AGENCY: December 13, 1989
FILED WITH LRC: December 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing will be held on this regulation on January 23, 1990 at 8a.m.. Any person who intends to attend this hearing must notify in writing at least five days before the hearing the following person: W. Michael Baker, Assistant Vice President for Business Affairs, Northern Kentucky University, Room 727A, Administrative Center, Highland Heights, Kentucky 41076. If no one notifies this agency that they wish to attend the hearing, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: W. Michael Baker
(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 Northern Kentucky University for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents

760 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 Northern Kentucky University.

Section 1. The Board of Regents of Northern Kentucky 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 Northern Kentucky University pursuant to KRS 164.410 shall be in the name of the Commonwealth of Kentucky for the use and benefit of Northern Kentucky University.

Dr. Herbert Booth, Chairman
APPROVED BY AGENCY: December 13, 1989
FILED WITH LRC: December 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing will be held on this regulation on January 23, 1990 at 8a.m.. Any person who intends to attend this hearing must notify in writing at least five days before the hearing the following person: W. Michael Baker, Assistant Vice President for Business Affairs, Northern Kentucky University, Room 727A, Administrative Center, Highland Heights, Kentucky 41076. If no one notifies this agency that they wish to attend the hearing, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: W. Michael Baker
(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 Northern Kentucky University for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents

760 KAR 1:050. Delegation of financial management responsibility.

RELATES TO: KRS 164A.560
STATUTORY AUTHORITY: KRS 164A.555 to 164A.630
NECESSITY AND FUNCTION: KRS 164A.560(1) permits the governing board 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 Northern Kentucky University authorizes the president, by formal, written assignment, to delegate any portion of this authority to the Vice President for Administrative, except as provided in Section 4 of this regulation.

Section 2. Northern Kentucky 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 Northern Kentucky 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 Northern Kentucky 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. Herbert Booth, Chairman
APPROVED BY AGENCY: December 13, 1989
FILED WITH LRC: December 15, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing will be held on this regulation on January 23, 1990 at 8a.m.. Any person who intends to attend this hearing must notify in writing at least five days before the hearing the following person: W. Michael Baker, Assistant Vice President for Business Affairs, Northern Kentucky University, Room 727A, Administrative Center, Highland Heights, Kentucky 41076. If no one notifies this agency that they wish to attend the hearing, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: W. Michael Baker
(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 Northern Kentucky University for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:010. Delegation of purchasing authority.

RELATES TO: KRS 164A.555 through 164A.630
STATUTORY AUTHORITY: KRS 164A.560(1)
NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 through 164A.630. This regulation implements the provisions of 164A.560(1) relative to delegation of procurement activities.

Section 1. (1) The Board of Trustees has authorized the President of the University to delegate administrative responsibility and authority for executing the purchasing function to the Office of the Vice Chancellor of Administration for the Lexington Campus. This office is responsible for implementing the provisions of administrative regulations 765 KAR 1:020 to 765 KAR 1:150.
(2) The Vice Chancellor of Administration for the Lexington campus is authorized to subdelegate those activities or any portion thereof to his subordinates to the extent authorized by University of Kentucky governing regulations.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton
(1) Type and number of entities affected: University of Kentucky Purchasing Division.
(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulation's numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.
1. First year: N/A
2. Continuing costs or savings: N/A
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: Adhering to the statutory requirements of KRS 164A.560.
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulation's numbers 200 KAR 5:301-5:316.
(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:020. Written procurement determinations.

RELATES TO: KRS 164A.555 through 164A.630
STATUTORY AUTHORITY: KRS 45A.025, 164A.560(1), 164A.630(b)
NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 and 164A.630. This regulation implements the principles of KRS 45A.025, relative to making procurement determinations.

Section 1. Every determination by a buyer or other purchasing employee, except secretarial, stenographic, or clerical employees, of the purchasing division engaged in or responsible for the performance of any procurement activity or function as provided by KRS Chapter 45A or regulations adopted pursuant thereto, shall be made in writing, based on written findings in support of said decision, and shall be signed by the employee making said determination.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990 at 9 a.m. at the University of Kentucky, Room 226 Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton
(1) Type and number of entities affected: University of Kentucky Purchasing Division.
(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.
1. First year: N/A
2. Continuing costs or savings: N/A
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: Adhering to the statutory requirements of

KRS 164A.560.
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.
(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:030. Application to be placed on official bid list.

RELATES TO: KRS 164A.555 through 164A.630
STATUTORY AUTHORITY: KRS 45A.110, 164A.560(1), 164A.630(b)
NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 through 164.630. This regulation implements the principles of KRS 45A.035(2)(e) and 45A.110.

Section 1. Any person, firm or corporation desiring to receive written notice of procurement requirements of the university may make application to have his name placed on a bidders' list for the types or kinds of procurement activities or functions he wishes to supply or provide. Upon request to the purchasing division a "Vendor's Application Form for Official Bid List" will be sent to any prospective bidder. Complete information as requested in the application must be submitted by the prospective bidder before his name will be placed on the University of Kentucky official bidders list.

Section 2. (1) Upon receipt of a completed "Vendor's Application Form for Official Bid List," the qualifications of the prospective bidder will be verified in terms of:
(a) The ability and capacity to perform on a timely basis under contract for goods and services which he desires to bid on and furnish.
(b) Good character, integrity, reputation, and experience.
(c) Satisfactory performance in prior dealings with the University of Kentucky and/or the Commonwealth of Kentucky.
(d) Previous satisfactory compliance with the health rules and regulations of the University of Kentucky or the Commonwealth of Kentucky.
(2) The purchasing division may refuse to list any prospective bidder not meeting the minimum qualifications set forth above. The prospective bidder has the burden of showing that he meets the qualifications for inclusion on the bidders' lists to which he seeks to gain entry. The prospective bidder will be promptly advised if his application is disapproved and the reason or reasons for disapproval. A prospective bidder may appeal the disapproval of his application to the Vice Chancellor of Administration for the Lexington campus. The appeal must be in writing and filed in the office of the Vice Chancellor within two (2) calendar weeks after the date of the notice of disapproval of the application; grounds for the appeal shall be stated with reasonable particularity and shall relate directly to reason or reasons for disapproval of the application. Any prospective bidder whose "Vendor's Application Form for Official Bid List" is disapproved may reapply after the expiration of six (6) months following the date of disapproval of his last application.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton
(1) Type and number of entities affected: University of Kentucky Purchasing Division.
(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.
1. First year: N/A
2. Continuing costs or savings: N/A
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: Adhering to the statutory requirements of KRS 164A.560.
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.
(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:040. Performance bonds; forms; payments.

RELATES TO: KRS 164A.555 through 164A.630
STATUTORY AUTHORITY: KRS 45A.190, 45A.195, 164A.560(1), 164A.630(b)
NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the porvisions of KRS 164A.555 through 164A.630. This regulation implements the principles of KRS 45A.190 and 45A.195.

Section 1. (1) Every contractor to whom it is proposed to award a contract for construction services costing more than $25,000 shall, prior to the award of such contract, give a bond or bonds to the University of Kentucky as obligee, in form satisfactory to the purchasing division, executed by a surety company authorized to do business in Kentucky, and in a penal sum equal to 100 percent of the contract price as it may be increased, the conditions of which shall bind the contractor, as principal, and the surety to the performance of the contract according to the terms, conditions and specifications of the contract, and in any changes or modifications thereto, and to the payment of all costs for labor, materials, equipment, supplies, taxes, and other proper charges and expenses incurred or to be incurred in the performance of said contract.
(2) Every contractor to whom it is proposed to award a contract for construction services costing $25,000 or less, shall, prior to the award of such contract, give bond to the University of Kentucky, as obligee, as provided in subsection (1) of this section, when required by the terms of an invitation for bids issued pursuant to KRS 45A.080, or an advertisement and solicitation for proposals for competitive negotiations pursuant to KRS 45A.085 and 45A.090.

Section 2. The provisions of Section 1 of this regulation notwithstanding, every contractor to whom it is proposed to award a contract for the purchase of commodities, supplies or equipment or services by the University of Kentucky shall, when required by the terms of an invitation for bids, or solicitation or request for proposals, give bond to the University of Kentucky, as obligee with surety satisfactory to the purchasing division, in a penal amount, not to exceed 100 percent of the contract price, to be determined by the purchasing division as sufficient to assure faithful performance of the contract by the contractor according to its terms.

Section 3. A contract shall not be awarded to any contractor who fails or refuses to give bond to the university when required as provided by KRS 45A.190 and this regulation.

Section 4. A contractor may be declared in default of his contract with the University of Kentucky, and his bond forfeited, when it is determined by the purchasing official that the contractor is in breach of the terms and conditions of the contract, including, in contracts for construction services, failure to make timely payment of bills for labor, materials and supplies as evidenced by liens filed against the construction fund by laborers and suppliers pursuant to KRS 376.195 to 376.260, or by letters of indebtedness filed with the purchasing division evidencing that such bills are due and have not been paid by the contractor.

Section 5. (1) The form of performance and payment bond required to be given by contractors pursuant to Section 1 of this regulation, including the terms and conditions thereof, shall be included in each capital construction bid issued. Such form of bond shall be applicable to, and included in all contracts for construction services when required by KRS 45A.190 and this regulation; provided, however, that such bond form may be modified, or different terms substituted or other terms added, when, in connection with a particular procurement, it is determined in writing by the purchasing official that such modification, substitution or addition of terms is reasonably required for the procurement in the best interest of the University of Kentucky.
(2) The form of bond required to secure the performance of all other contracts for procurement shall be the standard form of performance or payment bond such as is usually and customarily written and issued by surety companies authorized to do business in Kentucky, together with such additional terms as may be required by the purchasing division and agreed to by the surety.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton
(1) Type and number of entities affected: University of Kentucky Purchasing Division.
(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.
1. First year: N/A
2. Continuing costs or savings: N/A
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: Adhering to the statutory requirements of KRS 164A.560.
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.
(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:050. Competitive sealed bidding.

RELATES TO: KRS 164A.555 through 164A.630
STATUTORY AUTHORITY: KRS 45A.080, 164A.560(1), 164A.630(b)
NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 through 164A.630. This regulation implements the principles of KRS 45A.080.

Section 1. All contracts for construction exceeding an estimated cost of $10,000, and $5,000 for all other purchases, shall be awarded upon the basis of competitive sealed bids unless it is determined in writing that this method is not practicable and that the procurement may, in the best interests of the university, more practically be obtained through competitive negotiations.

Section 2. The purchasing division shall cause public notice of invitations for bids for furnishing procurement requirements of the university through newspaper advertisement in the manner set forth in KRS 45A.080(3) and shall solicit bids from interested persons listed on the bidders' lists for particular requirements by sending invitations for bids to at least ten (10) persons listed in such bidders' lists. If there are not ten (10) persons listed on a particular bidders' list, invitations shall be sent to all persons listed on such list.

Section 3. Bidders shall complete, execute and submit their bids in strict compliance with the instructions contained in the invitation for bids. Bid forms shall be provided by the purchasing division and a bidder responding to an invitation for bids shall use only the bid form or form of proposal furnished by the purchasing division in submitting his bids.

Section 4. Bidders shall submit their bids at the place and at, or prior to the date and hour set in the invitation for bids. Bids received after the hours set for opening bids are late bids and shall be so marked. A late bid shall not be considered for an award unless no other bid is received in response to an invitation for bids. The late bid, together with the envelope in which the bid was submitted bearing the stamped date and hour of receipt of the bid, and a note, signed by the buyer, indicating whether or not the bid was considered for an award shall be retained in the file pertaining to the invitation for bids to which the late bid relates.

Section 5. All bids, and any modifications to bids previously filed, received prior to the date and hour fixed for opening bids shall be kept secure and unopened. Envelopes containing bids but not marked to indicate that they contain a bid and listing the invitation for bids number and the date and hour of opening bids for that invitation may be opened for the

purpose of identification of the contents of the envelope and will be marked and resealed.

Section 6. The buyer or other employee of the purchasing division designated to open the bids shall determine when the time set for opening bids has arrived and shall so declare the time to those present for the bid opening. He shall then and there personally, in the presence of the bidders or their representatives and anyone else who may wish to attend the bid opening, open all bids received as of that date and hour; when practical, the names of the bidders and the amounts of their bids may be read aloud to the persons present. Except where, due to the nature or complexity of an invitation for bids, it may be deemed impractical, a bid tabulation summary sheet shall be prepared for each invitation for bids recording the name of each bidder, a description of the supplies or services bid and the amounts of the bids received. The bid tabulation summary sheet shall be permanently retained in the file pertaining to that invitation for bids and shall be available for public inspection. Inspection of bids by interested persons shall not be permitted or authorized during the formal bid opening process.

Section 7. The bids shall be examined by the buyer responsible for the procurement for any clerical or technical errors, reviewed for technical compliance with the terms of the invitation for bids, and the supplies or services bid evaluated for conformity with the specifications contained in the invitation for bids. Every bidder shall, when requested by the purchasing official responsible for the particular procurement, clarify or explain, in writing, any matter contained in his bid about which the purchasing officer may have question or believes in good faith needs to be clarified and explained. The bid of any bidder who fails or refuses, within a reasonable time to give a written clarification or explanation of his bid, or any part thereof, when requested to do so by the purchasing officer, shall not be considered further for an award on the basis of that invitation for bids. The written clarification or explanation of a bid, or a part of a bid, shall be incorporated in and become a part of any contract awarded on the basis of that bid. In due course, and after a reasonable bid evaluation period, the contract shall be awarded to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price, whichever is determined by the purchasing official to be in the best interests of the university or as designated in the invitation for bids as the basis for award of the contract. If, after evaluation of the bids, including consideration of any clarifying or explanatory information submitted by the bidders, it is determined by the purchasing officer that no satisfactory bid has been received, all bids may be rejected and, in the discretion of the purchasing officer, the invitation for bids cancelled, new bids invited on the basis of the same or revised specifications, or competitive negotiations under taken for the procurement. The basis for the rejection of all bids and subsequent action taken or to be taken with respect to the invitation for bids shall be recorded in writing and filed in the invitation for bids file relating to the particular procurement.

Section 8. (1) The right to reject any and all bids and to waive technicalities and minor irregularities in bids shall be maintained and preserved in the case of all invitations for bids issued by the purchasing division.

(2) Grounds for the rejection of bids include but shall not be limited to:

(a) Failure of a bid to conform to the essential requirements of an invitation for bids.

(b) Any bid which does not conform to the specifications contained or referenced in any invitation for bids shall be rejected unless the invitation authorized the submission of alternate bids and the items offered as alternatives meet the requirements specified in the invitation.

(c) Any bid which fails to conform to a delivery schedule established in an invitation for bids.

(d) A bid imposing conditions which would modify the terms and conditions of the invitation for bids, or limit the bidder's liability to the university on the contract awarded on the basis of such invitation for bids.

(e) Any bid determined by the purchasing officer in writing to be unreasonable as to price.

(f) Bids received from bidders determined to be not responsible bidders.

(g) Failure to furnish a bid guarantee when required by an invitation for bids.

(3) Technicalities or minor irregularities in bids which may be waived when the purchasing official determines that it will be in the university's best interest to do so, are mere matters of form not affecting the material substance of a bid or some immaterial deviation from or variation in the precise requirements of the invitation for bids and having no or a trivial or negligible effect on price, quality, quantity or delivery of supplies or performance of the services being procured, the correction or waiver of which will not affect the relative standing of, or be otherwise prejudicial to other bidders. The purchasing officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in his bid, or waive such deficiency where it is advantageous to the university to do so.

Section 9. Where a mistake in a bid is claimed, and the evidence is clear and convincing that a material mistake was made in the bid and that due to such mistake, the bid submitted was not the bid intended, the bidder may be permitted to withdraw his bid. It shall be the duty of all contractors bidding to carefully review and verify the accuracy of their bids both before submitting them and prior to execution of a contract. When a mistake in a bid is claimed after the award and execution of a contract, on the basis of such bid, the contractor shall be required to perform according to the terms and conditions of the contract unless it is established by clear and convincing evidence that a material mistake had been made in the original bid and that the contractor would sustain a financial loss if required to perform the contract according to its terms; a reduction or diminution in profit margin shall not be deemed a financial loss under this section. Where the evidence is clear and convincing that a material mistake has been made in a bid after the award of a contract, and

the contractor will sustain a financial loss if required to perform the contract, the contract shall be rescinded and the contractor shall be ineligible to submit a bid upon readvertisement for the construction services.

Section 10. The following matters shall be applicable to all invitations for bids issued, bids submitted, and contracts awarded for the purchase of commodities, supplies and equipment pursuant to KRS 45A.080 and this regulation:

(1) Time discounts or cash discounts shall not be considered.

(2) Trade discounts. Trade discounts should be deducted by the vendor in calculating the unit price quoted, unless otherwise indicated in the bid.

(3) Quantity discounts. Quantity discounts should be included in the price of the item. When not included in the item price, the discount shall be considered only if the purchasing division deems it to be in the university's best interests. The unit price shown on the contract shall be the net price, less the discount, unless otherwise indicated in the bid.

(4) Unit prices. In case of a discrepancy in the extension of a price, the unit or item price shall govern over the total price of all items.

(5) Awards on an aggregate or individual item basis. An award may be made to the lowest aggregate bidder for all items, group of item, or on an individual item basis, whichever is deemed to be in the university's best interest. The methods and bases of award of contract and of evaluation of bids shall be stated in the invitation for bids.

(6) Telegraphic bids. When the purchasing division has invited bids or requested written quotations, telegraphic responses shall not be accepted.

FOSTER OCKERMAN, SR., Chairman

APPROVED BY AGENCY: December 12, 1989

FILED WITH LRC: December 14, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton

(1) Type and number of entities affected: University of Kentucky Purchasing Division.

(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.

1. First year: N/A

2. Continuing costs or savings: N/A

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: Adhering to the statutory requirements of KRS 164A.560.

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.

(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:060. Competitively negotiated contracts.

RELATES TO: KRS 164A.555 through 164A.630

STATUTORY AUTHORITY: KRS 45A.085, 45A.090, 164A.560(1), 164A.630(b)

NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 through 164A.630. This regulation implements the principles of KRS 45A.085 and 45A.090 relating to competitively negotiated contracts.

Section 1. When, due to the complex nature or technical detail of a particular procurement, or when, in the opinion of the purchasing official, specifications cannot be fairly and objectively prepared so as to permit competition in the invitation for sealed bids, or for high technology electronic equipment available from a limited number of sources of supply and for

which specifications cannot practicably be prepared except by reference to the specifications of the equipment of a single source of supply, or when it is otherwise determined by the purchasing official that the invitation for competitive sealed bids is not practicable, or when it is determined by the purchasing official that the conditions described in KRS 45A.085(3) or 45A.090(1) exist, and except for procurements under KRS 45A.095 and 45A.100, and regulations adopted pursuant thereto, a contract may be awarded for a procurement by competitive negotiations as authorized by KRS 45A.085 and 45A.090 and this regulation. The purchasing official shall make a written determination of the reasons it is considered impractical to invite bids prior to initiating any other action leading toward the award of a contract on the basis of competitive negotiations.

Section 2. When it has been determined that it is not practical to invite competitive bids as provided in Section 1 of this regulation, except when such determination is based on the existence of the conditions mentioned in KRS 45A.085(3) or 45A.090(1), action to obtain a procurement by competitive negotiations shall commence by advertisement and solicitation for written proposals in the manner specified by KRS 45A.080(3) and regulations adopted pursuant thereto. The advertisement or solicitation for proposals for competitive negotiations shall state:

(1) That the university proposes to enter into competitive negotiations with responsible offerors for a procurement;

(2) The date, hour and place that written proposals for the procurement shall be received;

(3) The type of procurement involved and a description of the supplies or services sought; provided, however, that detailed specifications need not be listed in newspaper advertisements, or solicitations for proposals sent to vendors listed on a bidder's list maintained by the university if it is considered impractical by the purchasing official to do so, but potential offerors shall be informed by such advertisement or solicitation where such detailed specifications, if available for the particular procurement, may be obtained:

(4) The evaluation factors to be considered by the university in the competitive negotiations in determining the proposal most advantageous to the university, and the proposed method or methods of award of contract;

(5) Such other information as, in the opinion of the purchasing official, may be desirable or necessary to reasonably inform potential offerors about the requirements of the procurement or the limits or bounds of the competitive negotiations proposed to obtain the procurement.

Section 3. All written proposals received by the university in response to advertisement or solicitation for proposals for competitive negotiations shall be kept secure and unopened until the date and hour set for opening the proposals. Proposals for competitive negotiations not clearly marked as such on the envelope in which received may be opened for identification purposes, and shall be appropriately identified with reference to the particular procurement and resealed until the time for opening proposals.

Section 4. At the close of business on, or at the beginning of the next business day after the date fixed for receiving proposals for competitive negotiations, all proposals received as of the close of business on that date shall be transmitted to the purchasing official for the procurement for opening. Proposals for competitive negotiations shall not be subject to public inspection until negotiations between the university and all offerors have been concluded and a contract awarded to the responsible offeror submitting the proposal determined in writing to be the most advantageous to the university, price, and the evaluation factors set forth in the advertisement and solicitations for proposals considered.

Section 5. (1) The purchasing official shall examine each written proposal received for general conformity with the advertised terms of the procurement. If it has been provided in the advertisement or solicitation for proposals that an award may be made without written or oral discussions, the purchasing official may, upon the basis of the written proposals received, award the contract to the responsible offeror submitting the proposal determined in writing to be the most advantageous to the university, price, and the published evaluation factors considered. If, after the proposals have been examined, it is determined that written and/or oral discussions should be had with the offerors, the purchasing official shall determine in writing, based on an individual review, those proposals received from responsible offerors that are preliminarily susceptible of being selected for award of a contact for the procurement. Each such offeror shall be contacted informally by the purchasing official and a meeting scheduled for discussion of the offeror's proposals. Discussions need not be conducted under the circumstances of or relative to the topics enumerated in KRS 45A.085(6)(a), (b) or (c).

(2) Discussions with offerors shall be held informally and may be conducted orally, in writing, or both orally and in writing, as determined by the purchasing official in writing to be the most advantageous to the university. If, however, after discussions with all responsible offerors have concluded, or after examination of the written proposals initially submitted, it is determined that no acceptable proposal has been submitted, any or all proposals may be rejected and, in the discretion of the purchasing official, new proposals may be solicited as provided in this regulation on the basis of the same, or revised terms, or the procurement may be abandoned.

Section 6. The purchasing official shall prepare a written summary of all oral discussions in competitive negotiations setting forth the date or dates of discussions with all responsible offerors and the general substance of the discussions. Verbatim records of the discussion shall not be required.

Section 7. When it is determined in writing by the purchasing official that the conditions mentioned in either KRS 45A.085(3), or 45A.090(1), exist with respect to any particular procurement, competitive negotiations may be

undertaken to obtain the requirements of such procurement as provided by KRS 45A.085(3) or 45A.090(1), and according to the procedures set forth in Sections 3 to 7 of this regulation.

Section 8. When, after solicitation for proposals to enter into competitive negotiations only one (1) proposal responsive to the solicitation is received, the purchasing official may commence negotiations with the single offeror and any resulting contract entered into with that offeror shall be deemed to have been competitively negotiated and awarded in accordance with KRS 45A.085 and this regulation; provided, however, that the terms and conditions of any such contract shall not in any material respect deviate in a manner detrimental to the purchasing division from the terms and conditions specified in the solicitation for proposals.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton
(1) Type and number of entities affected: University of Kentucky Purchasing Division.
(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.
1. First year: N/A
2. Continuing costs or savings: N/A
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: Adhering to the statutory requirements of KRS 164A.560.
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.
(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:070. Small purchase procedures.

RELATES TO: KRS 164A.555 through 164A.630
STATUTORY AUTHORITY: KRS 45A.100, 164A.560(1), 164A.630(b)
NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 through 164A.630. This regulation implements the principles of KRS 45A.035(2)(c) and 45A.100, relating to small purchase procedures.

Section 1. Small purchase procedures may be used by the university within the aggregate amounts prescribed in this regulation. Procurement requirements shall not be parceled, split, divided or purchased over a period of time in order to meet the dollar limitations for use of small purchase procedures. Aggregate amounts for small purchases are:
(1) $10,000 for construction services;
(2) $5,000 for all other categories of goods and services purchased.

Section 2. (1) The university shall informally obtain three (3) or more price quotations from qualified sources of supply for all small purchases between $3,000 and $10,000 for construction services and between $3,000 and $5,000 for all other purchases. The price quotations received, a tabulation of prices offered, and comments by the purchasing agent handling the small purchase concerning the basis selected for placing the order, shall be recorded in writing and shall be filed in a solicitation file to be maintained by the purchasing division.
(2) Small purchases may be from any available source of supply, without first obtaining price quotations from other sources for all other categories of goods and services costing $3,000 or less.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton
(1) Type and number of entities affected: University of Kentucky Purchasing Division.
(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.
1. First year: N/A
2. Continuing costs or savings: N/A
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: Adhering to the statutory requirements of KRS 164A.560.
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.
(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:080. Noncompetitive negotiations.

RELATES TO: KRS 164A.555 through 164A.630
STATUTORY AUTHORITY: KRS 164A.560(1), 164A.575, 164A.630(b)
NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 through 164A.630. This regulation implements the provisions of KRS 164A.575.

Section 1. Procurement contracts may be awarded through noncompetitive negotiations only as provided in this regulation. Contracts which may be awarded on the basis of noncompetitive negotiations include, and shall be limited to the following:
(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 Vice Chancellor of Administration for the Lexington campus, are available from only one (1) source; and
(9) Interests in real property.

Section 2. The Vice Chancellor of Administration for the Lexington campus 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.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton
(1) Type and number of entities affected: University of Kentucky Purchasing Division.
(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.
1. First year: N/A
2. Continuing costs or savings: N/A
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: Adhering to the statutory requirements of KRS 164A.560.
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.
(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:090. Multiple contracts.

RELATES TO: KRS 164A.555 through 164A.630
STATUTORY AUTHORITY: KRS 164A.560(1), 164A.630(b)
NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 through 164A.630. This regulation implements the principles of KRS 45A.035(2)(h).

Section 1. Multiple contracts may be awarded on the basis of a single invitation for bids as after competitive negotiations when it is determined in writing by the purchasing official in advance of the invitation for bids or the advertisement and solicitation for proposals for competitive negotiations that due to the geographic distribution of the departments requiring supplies of the kind or kinds to be sought through the procurement, the need for a variety of kinds and quality of supplies of the same general nature, or when it is otherwise determined that the award of multiple contracts may be in the university's best interests, and its needs met at a reasonable cost. A determination, and notice to potential bidders and offerors, that multiple contracts may be awarded for any procurement shall not preclude the award of a single contract for such procurement where it is determined by the purchasing official to be in the best interest of the university, price and other factors considered.

Section 2. When it is determined in writing by the purchasing official after the evaluation of competitive bids, or the closing of competitive negotiations, that bids or offers substantially and materially responsive to terms of the procurement have been received for only a part or parts of the requirements of the procurement, and the bids or offers received for another part or parts of the procurement are not substantially and materially responsive to such terms, a contract or contracts may be awarded as to the part or parts of the procurement for which responsive bids or offers have been received, and the bids or offers determined to be nonresponsive may be rejected in the discretion of the purchasing official and new bids invited, or proposals for competitive negotiations for the procurement advertised and solicited, on the same or revised terms, conditions and specifications.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton
(1) Type and number of entities affected: University of Kentucky Purchasing Division.
(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.
1. First year: N/A
2. Continuing costs or savings: N/A
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: Adhering to the statutory requirements of KRS 164A.560.
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.
(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:100. Contract modifications.

RELATES TO: KRS 164A.555 through 164A.630
STATUTORY AUTHORITY: KRS 45A.210(1), 164A.560(1), 164A.630(b)

NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 through 164A.630. This regulation implements the principles of KRS 45A.210(1).

Section 1. The purchasing division shall be authorized to provide by appropriate clauses to contracts for supplies or services of all types for changes and modifications to such contracts and providing for the method or methods of calculating the costs of any decrease, increase, or other change in the contract price resulting from such change or modification. In contracts for the purchase in fixed amounts of commodities, supplies and equipment, increases in quantities in excess of ten (10) percent of the original quantity, fixed by the contract shall not be permitted unless the invitation for bids or advertisement and solicitation for proposals for competitive negotiations for the procurement informed prospective bidders or offerors that an increase in quantities might be forthcoming, nor shall increases in unit prices be permitted in such contracts for increased quantities except as provided by a price escalation formula authorized by the invitation for bids or request for proposals for competitive negotiations.

Section 2. All changes or modifications to contracts for the purchase of commodities, supplies, equipment and construction services shall be effected by an advice of change in order to the contract which shall be supported by a written determination by the purchasing official documenting the reason and basis for the change or modification to the contract. A copy of the advice of change in order and the supporting documentation relative to any change or modification to a contract shall be filed and maintained in the contract file by the purchasing division.

Section 3. Every contractor awarded a contract containing clauses authorizing changes or modifications to the contract shall be deemed, by acceptance of the contract, to have agreed to the changes or modifications of the contract as provided therein.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton

(1) Type and number of entities affected: University of Kentucky Purchasing Division.

(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.

1. First year: N/A

2. Continuing costs or savings: N/A

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: Adhering to the statutory requirements of KRS 164A.560.

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.

(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:110. Termination of contracts.

RELATES TO: KRS 164A.555 through 164A.630

STATUTORY AUTHORITY: KRS 45A.210(2), (3), 164A.560(1), 164A.630(b)

NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 through 164A.630. This regulation implements the principles of KRS 45A.210(2), (3).

Section 1. (1) Any contractor who is determined in writing by the purchasing official to be in breach of any of the terms and conditions of a contract with the University of Kentucky held by such contractor, shall, in the discretion of the purchasing official, be declared in default and such contract may be terminated as a result of such default.

(2) A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to, failure to perform the contract according to its terms, conditions and specifications; failure to make delivery within the time specified or according to a delivery schedule fixed by the contract; late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics' liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing division; failure to diligently prosecute the work under a contract for construction services.

(3) The university shall not be liable for any further payment to a contractor under a contract terminated for the contractor's default after the date of such default as determined by the purchasing official except for commodities, supplies, equipment or services delivered and accepted on or before the date of default and for which payment had not been made as of that date. The contractor, and/or his surety, if a performance or payment bond has been required under the contract, shall be jointly and severally liable to the university for all loss, cost or damage sustained by the university as a result of the contractor's default; provided, however, that a contractor's surety liability shall not exceed the final sum specified in the contractor's bond.

Section 2. The university shall be authorized to terminate for its own convenience all contracts for the procurement of supplies and services when the purchasing official has determined that such termination will be in the university's best interests. When it has been determined that a contract should be terminated for the convenience of the university, the university shall be authorized to negotiate a settlement with the contractor according to terms deemed just and equitable by the university. Compensation to a contractor for lost profits on a contract terminated for convenience of the university shall not exceed an amount proportionate to the sum that the contractor's total expected margin of profit on the contract bore to the contract price, based on the total out-of-pocket expense incurred by the contractor as of the date of termination of the contract. Whenever a contract is terminated for the convenience of the university, the contractor shall have the burden of establishing the amount of compensation to which he believes himself to be entitled by the submission of complete and accurate cost data employed in submitting his bid or proposal for the contract, and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination. Payment of the sum agreed to in settlement of a contract terminated for convenience of the university shall be made from the same source of funds or account as the original contract.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton
(1) Type and number of entities affected: University of Kentucky Purchasing Division.
(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.
1. First year: N/A
2. Continuing costs or savings: N/A
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: Adhering to the statutory requirements of KRS 164A.560.
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.
(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:120. General and special conditions for bidding.

RELATES TO: KRS 164A.555 through 164A.630
STATUTORY AUTHORITY: KRS 164A.560(1), 164A.630(b)
NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 through 164A.630. This regulation implements the principles of KRS 45A.035(2)(e).

Section 1. The Vice Chancellor of Administration for the Lexington campus shall adopt, and revise from time to time as may be necessary and convenient, general conditions for bidding to the University of Kentucky. The divisions shall also be authorized to promulgate and adopt in relation to any particular procurement, or class or type of procurement, special conditions, supplemental to and in extension of the general conditions of bidding.

Section 2. The general conditions of bidding shall be applicable to, and incorporated by reference in all invitations for bids issued by the purchasing division.

Section 3. All vendors, firms, contractors and persons who submit a bid in response to an invitation for bids issued by the purchasing division shall be deemed to have agreed to comply with all terms, conditions, and specifications of such invitation for bids.

Section 4. The general conditions of bidding, or specific portions thereof, shall be applicable to all requests for proposals for competitive negotiations pursuant to KRS 45A.085 and 45A.090, in the discretion of the purchasing division; provided, however, the advertisement and solicitation for proposals for competitive negotiations shall inform prospective offerors that the request for proposals shall be subject to the general conditions or parts thereof, by specific reference to the particular parts or sections of the general conditions applicable to the particular procurement to be obtained by the competitive negotiations.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton
(1) Type and number of entities affected: University of Kentucky Purchasing Division.
(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.
1. First year: N/A
2. Continuing costs or savings: N/A
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: Adhering to the statutory requirements of KRS 164A.560.
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.
(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:130. General food and perishable items purchasing.

RELATES TO: KRS 164A.555 through 164A.630
STATUTORY AUTHORITY: KRS 164A.560(1), 164A.630(b)
NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 through 164A.630. This regulation implements the principles of KRS 45A.035(2)(d).

Section 1. The conditions and procedures for the purchase of general food and perishable items and commercial items purchased for resale shall be established by written policy published by the Vice Chancellor of Administration for the Lexington campus and revised from time to time as may be required.

Section 2. Commercial items purchased for resale shall be exempt from competitive bidding.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton
(1) Type and number of entities affected: University of Kentucky Purchasing Division.
(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.
1. First year: N/A
2. Continuing costs or savings: N/A
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: Adhering to the statutory requirements of KRS 164A.560.

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.

(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:140. Disciplinary action for failure to perform.

RELATES TO: KRS 164A.555 through 164A.630

STATUTORY AUTHORITY: KRS 164A.560(1)(b)

NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 through 164A.630. This regulation implements the principles of KRS 45A.035(2)(b).

Section 1. Any bidder or contractor to the University of Kentucky who, except for good cause shown, shall have committed, or failed to perform, as the context may require, one (1) or more of the following acts or omissions, shall be liable to disciplinary action by the purchasing division as set forth in Section 2 of this regulation. Specific grounds for disciplinary action include:

(1) Failure to post bid or performance bonds, or to provide alternate bid or performance guarantee in form acceptable to the purchasing division in lieu of a bond, as required by an invitation for bids or a solicitation for proposals;

(2) Substitution of commodities without the prior written approval of the purchasing division;

(3) Failure to comply with the terms and conditions of the invitation for bids or solicitation for proposals, or with the terms, conditions and specifications of a contract, including failure to complete performance of a contract within the time specified in the contract;

(4) Failure to replace inferior or defective materials, supplies or equipment immediately after notification by the purchasing division or the department to which such materials, supplies or equipment has been delivered;

(5) Failure by a bidder listed on a bidder's list to respond to three (3) (five (5) for construction service contracts) invitations for bids sent to such bidder;

(6) Refusal to accept a contract awarded pursuant to the terms of an invitation for bids, or following the close of competitive negotiations;

(7) Falsifying invoices, or making false representations to the university, or untrue statements about, any payment under a contract, or to procure award of a contract, or to induce a modification in the price or the terms of a contract to the contractor's advantage;

(8) Collusion, or collaboration with another bidder or other bidders, in the submission of a bid or bids for the purpose of lessening or reducing competition;

(9) Falsifying information in the submission of an application for listing on a purchasing division bidders' list;

(10) Failure to report, and to pay over to the Revenue Cabinet any Kentucky sales and/or use taxes as may be due in connection with a procurement contract as provided by law;

(11) Failure to comply with the prevailing wage law requirements of state or federal laws as may be applicable to any public works contract of the university.

Section 2. (1) Any contractor preliminarily determined to have done any act prohibited, or to have failed to do any act required by Section 1(1) to (6) of this regulation shall, in the discretion of the Vice Chancellor of Administration for the Lexington campus, be liable to be placed on probation, or suspended from bidding to the University of Kentucky, or a combination of suspension from bidding and probation, for not more than twelve (12) months.

(2) Any contractor preliminarily determined to have done any act prohibited by Section 1(7), (8), and (9) of this regulation shall be removed from the bidders' lists and shall be ineligible for reinstatement to such lists for a period not to exceed twenty-four (24) months following the date of removal. Any contractor removed from the bidders' lists under this section shall be eligible to apply for reinstatement as provided in 765 KAR 1:030, after the expiration of the removal period.

(3) Any contractor, or any subcontractor to a contractor, determined by the Labor Cabinet to have violated the prevailing wage requirements of KRS Chapter 337 shall be suspended from bidding to the University of Kentucky, or to participate in a public works contract of the University of Kentucky, effective on and after the date the purchasing division receives notice from the Labor Cabinet that such contractor or subcontractor has been determined to have violated the prevailing wage law, and until such time as the Labor Cabinet has determined the contractor or subcontractor to be in compliance with the requirements of such law.

Section 3. Except for the grounds mentioned in Section 1(5), (6) and (11) of this regulation a preliminary written determination shall be made concerning the facts of any allegation or claim that a bidder or contractor has either committed

an act prohibited, or failed to perform an act required, by Section 1 of this regulation before any disciplinary action is taken against such contractor. Such preliminary determination shall be submitted to the Office of General Counsel, University of Kentucky, for review prior to the administration of any disciplinary action as authorized by Section 2 of this regulation. Notice of disciplinary action shall be sent to the bidder or contractor at the address shown in the purchasing division's records by certified mail, return receipt requested.

Section 4. Bidders or contractors against whom disciplinary action has been taken under this regulation may appeal the action to the Vice Chancellor of Administration for the Lexington campus. The appeal must be filed in the office of the Vice Chancellor within ten (10) working days after the date of notice of the disciplinary action has been received by the bidder or contractor as shown by the certified mail receipt. The appeal must be filed in writing and must state facts showing cause why the disciplinary action should be set aside. An appeal constituting a general denial of the charges contained in the notice of disciplinary action, unless supported by specific facts rebutting such charges, shall be preemptorily dismissed. The appellant may request either a formal hearing before a hearing officer to be designated by the Vice Chancellor to take proof and make findings and recommendations to the Vice Chancellor, or an informal hearing to be conducted by the division director having jurisdiction over the particular procurement activity or function, or his designee. A written report of the substance of the matters raised in such informal hearing shall be prepared and submitted to the Vice Chancellor and recommending that the appeal be sustained or denied. The rules of evidence shall not apply in either formal or informal hearings conducted under this section and any matter considered pertinent to the issues of the hearing shall be admissible, subject only to the determination by the presiding officer as to the proper weight to be accorded all matters introduced at the hearing.

Section 5. No purchase of any kind shall be made by the university from a bidder or contractor who has been suspended or removed from the bidders' lists, except for those removed for the grounds stated in Section 1(5) of this regulation. All university departments shall be promptly informed about bidders or contractors suspended or removed from the bidders' lists and shall immediately comply with this prohibition.

Section 6. The administration of disciplinary action against a bidder, potential bidder or contractor under this regulation shall not preclude the taking of other action by the university, based on the same facts, as may be otherwise available, either at law or in equity, including, without limitation to the generality thereof, suits for damages or actions for specific performance.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton
(1) Type and number of entities affected: University of Kentucky Purchasing Division.
(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.
1. First year: N/A
2. Continuing costs or savings: N/A
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: Adhering to the statutory requirements of KRS 164A.560.
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.
(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. All levels follow the same requirement.

UNIVERSITY OF KENTUCKY
Board of Trustees

765 KAR 1:150. Works of art.

RELATES TO: KRS 164A.555 through 164A.630
STATUTORY AUTHORITY: KRS 164A.560, 164A.630(b)
NECESSITY AND FUNCTION: The University of Kentucky Board of Trustees is authorized by KRS 164A.560(1) to promulgate purchasing regulations for the implementation of the provisions of KRS 164A.555 through 164A.630. This regulation implements the provisions of KRS 45A.050.

Section 1. The University of Kentucky, which maintains a museum, shall be authorized to purchase or otherwise acquire from any source, and to sell, trade, or otherwise dispose of works of art and artifacts acquired for display in such museum, or which the university is authorized to dispose of, according to terms determined to be fair and just, as may be ascertained by appraisal, and will promote the purposes of the museum. The curator, or other employee of the university responsible for the operation of the museum shall prepare an inventory of all works of art and artifacts belonging to the museum, which shall be filed with the University of Kentucky Controller's Division, and shall maintain records of all acquisitions and disposition of works of art and artifacts of the museum, and shall file annually with the University of Kentucky Controller's Division a revised inventory of such works of art and artifacts.

Section 2. The university shall be authorized to purchase or otherwise acquire, for its own use, or for any statutorily authorized purpose of such agency, published books, maps, periodicals, and technical pamphlets.

FOSTER OCKERMAN, SR., Chairman
APPROVED BY AGENCY: December 12, 1989
FILED WITH LRC: December 14, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990, at 9 a.m. at the University of Kentucky, Room 226, Peterson Service Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Tom Fields, Director, Division of Purchasing, University of Kentucky, 322 Peterson Service Building, Lexington, Kentucky 40506-0005.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Jack C. Blanton
(1) Type and number of entities affected: University of Kentucky Purchasing Division.
(a) Direct and indirect costs or savings to those affected: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316. In the past, the University of Kentucky Purchasing Division has been adhering to these regulations, consequently there will be no additional direct or indirect costs related to these new administrative regulations.
1. First year: N/A
2. Continuing costs or savings: N/A
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: Adhering to the statutory requirements of KRS 164A.560.
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None. Currently, the University of Kentucky Procurement and Construction Division is budgeted for complying with these administrative regulations.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None, this method is a statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. These regulations are based on Kentucky administrative regulations numbers 200 KAR 5:301-5:316.
(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. All levels follow the same requirement.

WESTERN KENTUCKY UNIVERSITY
Board of Regents

770 KAR 1:010. Acquisition and disbursement of funds.

RELATES TO: KRS 164A.560, 164A.565
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.550 permits governing boards of each public institution of higher education to elect to perform financial management functions in accordance with KRS 164A.550 to 164A.630 by issuing regulations to do so. This rule implements the provision of KRS 164A.560 and 164A.565 at Western Kentucky University.

Section 1. The Board of Regents of Western Kentucky 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 operation or special purpose activities of Western Kentucky 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 so official shall 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 Business Affairs and such other university officials as the president may authorize in writing in accord with sound business practices.

Section 2. The accounting system of Western Kentucky 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 custodian 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 allocated. 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 Finance, 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 Western Kentucky 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.

JOSEPH IRACANE, Chairman
APPROVED BY AGENCY: December 11, 1989
FILED WITH LRC: December 14, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990 at 9 a.m. at Western Kentucky University. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Dr. Paul B. Cook, Executive Vice President for Administrative Affairs, Western Kentucky University, 109 Wetherby Administration Building, Bowling Green, Kentucky 42101.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Cook

(1) Type and number of entities affected: Since the university internally enacted this regulation in 1983 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: Western Kentucky

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.

WESTERN KENTUCKY UNIVERSITY
Board of Regents

770 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 in accordance with KRS 164A.630 by issuing regulations to do so. This rule implements the provision as to annual audits under KRS 164A.570 at Western Kentucky University.

Section 1. Upon recommendation of the president, based upon appropriate procurement procedure, the Board of Regents of Western Kentucky 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.550 to 164A.630. The Secretary of the Finance 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 Department of Finance, 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.

JOSEPH IRACANE, Chairman

APPROVED BY AGENCY: December 11, 1989

FILED WITH LRC: December 14, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990 at 9 a.m. at Western Kentucky University. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Dr. Paul B. Cook, Executive Vice President for Administrative Affairs, Western Kentucky University, 109 Wetherby Administration Building, Bowling Green, Kentucky 42101.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Cook

(1) Type and number of entities affected: Since the university internally enacted this regulation in 1983 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: Western Kentucky 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 statutes, 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 the 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.

WESTERN KENTUCKY UNIVERSITY
Board of Regents

770 KAR 1:030. Purchasing; inventories; title sales of surplus property; bidding procedures.

RELATES TO: KRS 164A.575

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 in accordance with KRS 164A.550 to 164A.630 by issuing regulations to do so. This rule implements the provision as to KRS 164A.575 at Western Kentucky University.

Section 1. The President of Western Kentucky 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 Western Kentucky 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 Western Kentucky University shall direct the appropriate institutional officers to take and maintain inventories of plant and equipment.

Section 4. The President of Western Kentucky 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 Western Kentucky 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 Finance 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 Western Kentucky 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 president. Such request shall describe the property and state the reasons why the president 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 or 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 Department of Finance or the Transportation Cabinet for such requirements of that department or 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 the board of the university, based upon a written application by the grantor or lessor approved by the Board, after a finding that the employee has not either himself or through any other person influenced or attempted to influence the board to purchase 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. Any real property acquired by the Board of Regents of Western Kentucky University pursuant hereto shall be in the name of the Commonwealth of Kentucky for the use and benefit of Western Kentucky University.

Section 10. 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 11. The president, on behalf of the Board, 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 Purchasing review all such purchases in terms of energy conservation plans of the university and advise the president of his delegated accordingly.

Section 12. 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 Business Affairs 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.

JOSEPH IRACANE, Chairman

APPROVED BY AGENCY: December 11, 1989

FILED WITH LRC: December 14, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990 at 9 a.m. at Western Kentucky University. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Dr. Paul B. Cook, Executive Vice President for Administrative Affairs, Western Kentucky University, 109 Wetherby Administration Building, Bowling Green, Kentucky 42101.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Cook

(1) Type and number of entities affected: Since the university internally enacted this regulation in 1983 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 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.

WESTERN KENTUCKY UNIVERSITY
Board of Regents

770 KAR 1:040. Disposal of property proceeds.

RELATES TO: KRS 164.410, 164A.575
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 in accordance with KRS 164A.550 to 164A.630 by issuing regulations to do so. This rule implements the provisions as to disposal of property under KRS 164.410 and 164A.575 at Western Kentucky University.

Section 1. The Board of Regents of Western Kentucky 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.

JOSEPH IRACANE, Chairman
APPROVED BY AGENCY: December 11, 1989
FILED WITH LRC: December 14, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990 at 9 a.m. at Western Kentucky University. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Dr. Paul B. Cook, Executive Vice President for Administrative Affairs, Western Kentucky University, 109 Wetherby Administration Building, Bowling Green, Kentucky 42101.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Cook
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1983 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 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.

WESTERN KENTUCKY UNIVERSITY
Board of Regents

770 KAR 1:050. Delegation of financial management responsibility.

RELATES TO: KRS 164A.560
STATUTORY AUTHORITY: KRS 164A.550 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.550 to 164A.630 to delegate those responsibilities by regulation to appropriate officials of the university. This rule provides for such delegations.

Section 1. The Board of Regents of Western Kentucky University authorizes the president, by formal, written assignment, to subdelegate any portion of his authority to the Vice President for Business Affairs except as provided in Section 4 of this regulation.

Section 2. Western Kentucky 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 assistants 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 Western Kentucky University official with authority derived from a delegation or subdelegation under this rule 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 cessation by the individual of active performance of duties at the university for any reason.

Section 4. No official, including the president, is authorized by Western Kentucky 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 prior specific action of the Board of Regents.

JOSEPH IRACANE, Chairman
APPROVED BY AGENCY: December 11, 1989
FILED WITH LRC: December 14, 1989 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1990 at 9 a.m. at Western Kentucky University. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1990, 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: Dr. Paul B. Cook, Executive Vice President for Administrative Affairs, Western Kentucky University, 109 Wetherby Administration Building, Bowling Green, Kentucky 42101.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Cook
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1983 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.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the December 11 and 12, 1989 Meeting

The December meeting of the Administrative Regulation Review Subcommittee was held on Monday, December 11, 1989 at 1 p.m. and on Tuesday, December 12, 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. Without objection, the minutes of the November 1 and 2, 1989 meeting were approved.

Present December 11, 1989 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Gene Huff; Pat McCuiston and Bill Quinlan; Representatives Jim Bruce; Ronny Layman and Tom Kerr.

Present December 12, 1989 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representatives Jim Bruce and Ronny Layman.

Guests: Alice Downey, Gordon Mullins, Legislative Research Commission; Daniel F. Egbers, Roger Futrell, Tommy Greenwell, Chuck Vineyard, Department of Personnel; Richard L. Ross, Board of Pharmacy; Pete Pfeiffer, Lauren Schaaf, Thomas A. Young, Department of Fish and Wildlife Resources; Russell Barnett, Betty Beshoar, Carl Bradley, Gregory C. Copley, Martha L. Hall, Danny McClain, Dave Rosenbaum, Jim Villines, Natural Resources & Environmental Protection Cabinet; Connie Malone, Corrections Cabinet; Sandy Pullen, Transportation Cabinet; Gary Bale, William Duke, George Parsons, Kathy Williams, Department of Education; Guy Schoolfield, Labor Cabinet; Mike Fulkerson, State Racing Commission; Tom Barnes, Judith G. Walden, Department of Housing, Buildings and Construction; Elizabeth A. Browning, Michael B. Cavanah, Michael Cheek, Dudley J. Conner, Mel Counts, Truett DeMoisey, Ked Fitzpatrick, Eric Friedlander, Paul Gibson, Linda Howard, Robert N. Hurst, III, Gail Lanham, Sandra MacLaren, Delano Miller, Cathy G. Mobley, Anita Moore, David Nichols, Ishmael Preston, Nancy Rawlings, Mike Robinson, Angie Scott, Sharon Surbeck, Barbara F. White, Frank Willey, Mark Yancey, Cabinet for Human Resources; Leslie Cole, Environmental Quality Commission; Lee Jackson, Kentucky Association of State Employees; Paul Corbin, Kentucky Bond Pool; A. L. Holmstrom, Kentucky Chamber Environmental Committee; Lloyd R. Cress, Don Walker, Kentucky Crushed Stone Association; Tom Fitzgerald, Kentucky Resources Council; Reginald L. Thomas, Kentucky State University; Ed Norton, Right to Life of Central Kentucky; Fantley Smither, Capital Area Right to Life.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Donna Pierce, and Carla Arnold.

The Administrative Regulation Review Subcommittee met on December 11 and 12, 1989, and submits this report:

The Subcommittee determined that the following administrative regulations did not comply with KRS Chapter 13A:

Department of Personnel: Personnel Department; Classified

101 KAR 2:030 (Compensation plan.) Objections were raised to this regulation concerning: 1) the reinstatement of the "Outstanding Merit Increase Program", and limitation of such awards to a specific percentage of state employees; 2) the use of the word "permanent"; and 3) with regard to the educational achievement award, the restriction of awards to those who have not received tuition assistance from the state, and the calculation of the lump sum award. A statement was read by Kentucky University personnel from Interim President Mary L. Smith, that objected to the calculation of the lump sum award and the restriction to those who did not receive tuition assistance. Chairman O'Brien pointed out that KRS Chapter 18A provided that salary increments had to be based upon performance evaluation, and that the OMI program appeared to be in conflict with KRS Chapter 18A. The Subcommittee approved a motion that this regulation did not comply with statutory authority.

101 KAR 2:040 (Applications and examinations.) The following questions were raised: 1) whether all hiring for classified service had to be based on competitive examination; 2) whether statutory authority for a job bank existed; 3) if it did, whether separate agency job banks were permitted; 4) whether job banks were involved with the promotion or transfer of classified employees and, therefore, subject to the regulatory authority of the board. It was pointed out that KRS Chapter 18A may contain contradictory directives. Chairman O'Brien stated that the solution to the alleged confusion in KRS Chapter 18A and to certain other questions was to be found in the amendment of KRS Chapter 18A. The Subcommittee approved a motion that this regulation did not comply with statutory authority.

101 KAR 2:050 (Registers.) Similar questions concerning job banks that were raised when the previous regulation was considered were again raised on this regulation. In addition, certain language in Section 8 repeated or summarized language found in KRS 18A.180(2) which is prohibited by KRS 13A.120. The Subcommittee approved a motion that this regulation did not comply with statutory authority.

101 KAR 2:060 (Certification and selection of eligibles.) Agency personnel stated that they were willing to delete Section 4(3). Objections had been raised concerning this subsection and on language in Sections 2, 3 and 4 that repeated or summarized language in KRS 18A.110(6)(c),(d); KRS 18A.032(1)(h), (2)(g). It was pointed out that while the language in the regulation repeated or summarized language found in KRS Chapter 18A, the department was under a directive in KRS Chapter 18A to promulgate comprehensive administrative regulations. Chairman O'Brien stated that the way to cure the conflict, if any, would be to amend KRS Chapter 18A. The Subcommittee approved a motion that this regulation did not comply with statutory authority.

101 KAR 2:070 (Types of appointments and detail to special duty.) An objection had been raised to Section 1 because it did not contain an exception to the rule it established that would comply with the right of career and laid-off employees to priority in hiring. The Subcommittee approved a motion that this regulation did not comply with statutory authority.

101 KAR 2:090 (Service regulations.) Language in this regulation repeated or summarized language appearing in KRS Chapter 18A. Questions were raised concerning the authority of the commissioner to delegate to other agencies the termination of hours of work. Objections were made to the use of terms or format prohibited by KRS 13A.222. The Subcommittee approved a motion that this regulation did not comply with statutory authority.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:085 (KPDES discharge permit and variance fees.) After discussion from Subcommittee members and Lloyd R. Cress, representing the Kentucky Crushed Stone Association, the agency agreed to issue a general KPDES permit to each quarrying or crushed stone business which would eliminate the requirement that a permit fee be paid. This exemption is covered in 401 KAR 5:055. A motion was passed to object to the regulation due to excessive fees.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Sanitary Engineering

401 KAR 6:300 (Water well drillers certification; examination; fees.) A motion was passed to object to the regulation due to excessive fees.

Division of Waste Management: Hazardous Waste Fees

After no initial objection, a motion was made to reconsider the two regulations listed below. The motion passed; Representative Bruce voted no. A motion was passed to object to the regulations due to excessive fees; Representative Bruce voted no on the motion.

401 KAR 39:010 (Generator registration fees.)

401 KAR 39:020 (Delisting and exemption fees.)

Division for Air Quality: General Administrative Procedures

401 KAR 50:036 (Permit and exemption fees.) A motion was passed to object to the regulation due to excessive fees.

Transportation Cabinet: Department of Vehicle Regulation: Driver's License

601 KAR 12:040 (Driving history record; fee.) Chairman O'Brien stated that the fee charged for obtaining a copy of a driving history record exceeded the amount that may be charged under the formula specified in KRS 61.874(2) (Open Records Law--cost of reproduction, excluding labor). The Subcommittee approved a motion that this regulation did not comply with statutory authority.

Public Protection and Regulation Cabinet: Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Plumbing

Due to questions relating to the propriety of the new material requirements, the Subcommittee approved a motion that these two regulations do not comply with statutory requirements.

815 KAR 20:020 (Parts or materials list.)

815 KAR 20:130 (House sewers and storm water piping; methods of installation.)

Cabinet for Human Resources: Department for Social Services: Child Welfare

905 KAR 1:071 (Group homes for foster children.) Senator McCuiston and Representative Bruce noted that the communities in which the homes would be located were not consulted prior to a determination to establish homes in those communities. The Subcommittee approved a motion that this regulation did not comply with statutory authority.

The Subcommittee determined that the following administrative regulations, as amended, did not comply with KRS Chapter 13A:

Natural Resources and Environmental Protection CAbinet: Department for Environmental Protection: Division of Waste Management: Hazardous Waste Fees

401 KAR 39:030 (Part B treatment, storage, or disposal facility fees.) Section 3(4) of this regulation was amended to more equitably tier the fees for tanks smaller than 7,500 gallons, and to reflect cost differences based on the size of tanks. Section 3(5) was amended to more equitably tier the fees for containers greater than or smaller than 5,000 gallons and to reflect cost differences of additional containers of similar design based on the combined capacity of containers. Section 4 was amended by adding subsections (1) through (4) to more equitably tier the fees based on the number of solid waste management units to be reviewed. A motion was passed to object to the regulation due to excessive fees.

401 KAR 39:070 (Modification fees.) Section 3 was amended as follows: To reflect a lower fee for the addition of wastes classified as hazardous by characteristic, if that characteristic waste is already permitted; to tier modification fees for tanks and containers to be compatible with amendments proposed in 401 KAR 39:030; to make major modification fees equal to permit fees contained in 401 KAR 39:030; and to assure that fees for other major modifications are consistent. A motion was passed to object to the regulation due to excessive fees.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Corrections Cabinet: Office of the Secretary

501 KAR 6:120 (Blackburn Correctional Complex.) The material incorporated by reference in this regulation was amended to comply with the drafting requirements of KRS 13A.222.

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:050 (Uniform traffic control devices.) Section 2 of this regulation was amended to make it clear that the January 23, 1989 revision of the 1988 edition was being incorporated by reference, rather than specifying a retroactive date for the latest edition. It was pointed out that a regulation, and the material it incorporated by reference are, under KRS Chapter 13A, effective after review by an interim committee or, if the committee does not consider it, 30 days after referral by LRC.

Labor Cabinet: Department of Workplace Standards: Occupational Safety and Health

The following Labor Cabinet regulations were amended to reflect the specific sections of 29 CFR Part 1910 which are adopted in each regulation.

803 KAR 2:300 (Adoption of 29 CFR Part 1910.) This regulation was further amended to delete Section 3, which would have repealed 803 KAR 2:020. This repeal is being done in 803 KAR 2:031.

803 KAR 2:301 (Adoption of 29 CFR Part 1910.) Adopts 1910.1-1910.6.

803 KAR 2:302 (Adoption of 29 CFR Part 1910.) Adopts 1910.7-1910.19.

803 KAR 2:303 (Adoption of 29 CFR Part 1910.) Adopts 1910.20.

803 KAR 2:304 (Adoption of 29 CFR Part 1910.) Adopts 1910.35-1910.40.

803 KAR 2:305 (Adoption of 29 CFR Part 1910.) Adopts 1910.66-1910.70.

803 KAR 2:306 (Adoption of 29 CFR Part 1910.) Adopts 1910.94-1910.100.

803 KAR 2:307 (Adoption of 29 CFR Part 1910.) Adopts 1910.101-1910.120.

803 KAR 2:308 (Adoption of 29 CFR Part 1910.) Adopts 1910.132-1910.140.

803 KAR 2:309 (Adoption of 29 CFR Part 1910.) Adopts 1910.141-1910.149.

803 KAR 2:310 (Adoption of 29 CFR Part 1910.) Adopts 1910.151-1910.153.

803 KAR 2:311 (Adoption of 29 CFR Part 1910.) Adopts 1910.155-1910.165b.

803 KAR 2:313 (Adoption of 29 CFR Part 1910.) Adopts 1910.176-1910.190.

803 KAR 2:314 (Adoption of 29 CFR Part 1910.) Adopts 1910.211-1910.222.

803 KAR 2:315 (Adoption of 29 CFR Part 1910.) Adopts 1910.241-1910.247.

803 KAR 2:316 (Adoption of 29 CFR Part 1910.) Adopts 1910.251-1910.254.

803 KAR 2:317 (Adoption of 29 CFR Part 1910.) Adopts 1910.261-1910.275.

803 KAR 2:318 (Adoption of 29 CFR Part 1910.) Adopts 1910.301-1910.399.

803 KAR 2:319 (Adoption of 29 CFR Part 1910.) Adopts 1910.401-1910.441.

803 KAR 2:320 (Adoption of 29 CFR Part 1910.) Adopts 1910.1000-1910.1500.

803 KAR 2:400 (Adoption of 29 CFR Part 1926.) Adopts 1926.1-1926.4.

803 KAR 2:403 (Adoption of 29 CFR Part 1926.) Adopts 1926.50-1926.59.

803 KAR 2:404 (Adoption of 29 CFR Part 1926.) Adopts 1926.100-1926.107.

803 KAR 2:405 (Adoption of 29 CFR Part 1926.) Adopts 1926.150-1926.155.

803 KAR 2:406 (Adoption of 29 CFR Part 1926.) Adopts 1926.200-1926.203.

803 KAR 2:409 (Adoption of 29 CFR Part 1926.) Adopts 1926.350-1926.354.

803 KAR 2:410 (Adoption of 29 CFR Part 1926.) Adopts 1926.400-1926.449.

803 KAR 2:411 (Adoption of 29 CFR Part 1926.) Adopts 1926.450-1926.452.

803 KAR 2:413 (Adoption of 29 CFR Part 1926.) Adopts 1926.550-1926.556.

803 KAR 2:414 (Adoption of 29 CFR Part 1926.) Adopts 1926.600-1926.606.

803 KAR 2:416 (Adoption of 29 CFR Part 1926.) Adopts 1926.700-1926.702.

803 KAR 2:418 (Adoption of 29 CFR Part 1926.) Adopts 1926.800-1926.804.

803 KAR 2:420 (Adoption of 29 CFR Part 1926.) Adopts 1926.900-1926.914.

803 KAR 2:421 (Adoption of 29 CFR Part 1926.) Adopts 1926.950-1926.960.

Public Protection and Regulation Cabinet: State Racing Commission: Thoroughbred Racing Rules

810 KAR 1:003 (Licensing.) This regulation was amended to comply with the drafting requirements of KRS 13A.222 as follows: Section 2 was amended to delete the word "are" and to insert the words "shall be" in lieu thereof; Section 5(4) was amended to delete "and/"; Section 7(4) was amended to delete "will" and insert the word "shall" in lieu thereof. The use of "will" in Section 7(7) and in Section 11 is proper since it does not express a mandatory requirement; rather it stated a result or consequence.

810 KAR 1:020 (Hearings, reviews and appeals.) This regulation was amended, as recommended in the initial staff review, to comply with the drafting requirements of KRS 13A.222.

Cabinet for Human Resources: Department for Medicaid Services

907 KAR 1:004 (Resource and income standard of medically needy.) This regulation was amended to delete "or mental hospital".

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

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.)

101 KAR 2:020 (Classification plan.) Chairman O'Brien pointed out that whether the use of job titles in budget estimates had been approved by LRC as required by KRS 48.040(2) was unclear. He instructed staff to request information on this from the budget review staff.

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 2:040 (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 (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

At its October, 1988 meeting, the Subcommittee

objected to the following seven (7) regulations. At its December 11, 1989 meeting, the Subcommittee reviewed the following regulations, including its previous objections. The Subcommittee did not object to the following regulations

Water Quality

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

401 KAR 5:010 (Certification of wastewater system operators.)

Division of Waste Management: Hazardous Waste Fees

401 KAR 39:060 (Short-term fees.) Representative O'Brien objected.

401 KAR 39:080 (Recycling fees.) Representative O'Brien objected.

401 KAR 39:090 (Postclosure fees.) Representative O'Brien objected.

401 KAR 39:110 (Marketer and burner registration fees.) Representative O'Brien objected.

401 KAR 39:120 (Part A application fee.) Representative O'Brien objected.

Department for Surface Mining Reclamation and Enforcement: Bond and Insurance Requirements

405 KAR 10:200 (Kentucky bond pool.)

Corrections Cabinet: Office of the Secretary

501 KAR 6:030 (Kentucky State Reformatory.)

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.)

Office of Aeronautics: Airport Safety Standards

602 KAR 20:100 (Public use heliport.)

Education and Humanities Cabinet: Department of Education: Office of Vocational Rehabilitation: Administration

706 KAR 1:060 (General provisions for operation of the Office of Vocational Rehabilitation.)

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.)

Labor Cabinet: Department of Workplace Standards: Occupational Safety and Health

803 KAR 2:031 (Repeal of existing regulations.)

803 KAR 2:312 (Adoption of 29 CFR Part 1910.166-.171.)

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 2:407 (Adoption of 29 CFR Part 1926.250-.252.)

803 KAR 2:408 (Adoption of 29 CFR Part 1926.300-.305.)

803 KAR 2:412 (Adoption of 29 CFR Part 1926.500-.502.)

803 KAR 2:415 (Adoption of 29 CFR Part 1926.650-.653.)

803 KAR 2:417 (Adoption of 29 CFR Part 1926.750-.752.)

803 KAR 2:419 (Adoption of 29 CFR Part 1926.850-.860.)

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.)

803 KAR 2:600 (Adoption of 29 CFR Part 1928.)

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 20:120 (Water supply and distribution.)

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 5:040 (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 (Standards for need and amount; AFDC.)
904 KAR 2:025 (Kentucky child support guidelines.)
904 KAR 2:055 (Hearings and appeals.)

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 1:110 (Treatment-oriented child care.)
905 KAR 1:120 (Treatment of adjudicated delinquents.)
905 KAR 1:140 (Foster care, adoption assistance.)

Department for Medicaid Services: Medicaid Services
907 KAR 1:012 (Inpatient hospital services.)

The following regulations were deferred at the promulgating agency's request:

General Government Cabinet: Board of Pharmacy
201 KAR 2:030 (Reciprocity; temporary license.) This regulation was deferred so that it could be reviewed in detail and amended where it may conflict with statutory authority.

Cabinet for Human Resources: Office of Administrative Services: Vital Statistics
901 KAR 5:031 (Definitions: live birth, fetal death, induced termination of pregnancy and reportable events.) Questions were raised relating to the use of vague terms in place of the words "fetus" and "abortion"; and, to the deletion of the reporting requirement in Section 4. Agency personnel submitted copies of a court decision they felt required the deletion. Agency personnel agreed to defer this regulation until Subcommittee staff could review the decision and make a recommendation to the Subcommittee.

Department for Social Insurance: Public Assistance
904 KAR 2:116 (Low income home energy assistance program.) A court decision invalidated certain provisions of this regulation. These provisions had been the subject of objections raised in the review of this regulation. In order to permit the agency time in which to amend the regulation, without penalizing recipients of funds available under this regulation, the regulation was deferred rather than withdrawn.

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 11 a.m. until January 3, 1989 at 10 a.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 AGRICULTURE AND NATURAL RESOURCES Meeting of November 22, 1989

The Interim Joint Committee on Agriculture and Natural Resources met Wednesday, November 22, 1989, and submits this report:

The committee determined that the following administrative regulations comply with KRS Chapter 13A:

401 KAR 31:010
401 KAR 31:040, as amended by the Administrative Regulation Review Subcommittee
401 KAR 31:160
401 KAR 31:170
401 KAR 34:350
401 KAR 38:190
301 KAR 1:122
301 KAR 2:044 & E
301 KAR 2:140
401 KAR 4:125, amended as follows:
Section 4, subsection (3), by deleting "non-motorized" and inserting in lieu thereof "non-mechanized;" and
Section 7, subsection (3), after "kayak," insert the words "boat, with or without electric motor," and delete "nonmotorized" and insert in lieu thereof "nonmechanized" and
Section 8, subsection (2), delete "nonmotorzied" and substitute in lieu thereof "nonmechanized" and
Section 8, subsection (3), delete "nonmotorized" and substitute in lieu thereof "nonmechanized."

405 KAR 8:010, as amended by the Administrative Regulation Review Subcommittee and amended as follows:
Section 20, subsection (3), paragraph (d), subparagraph 3, by deleting the words "accepting maintenance responsibilities for the road", and inserting the words "acknowledging that the surface owner understands that the operator has no responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located." at the end of the last sentence; and
Section 20, subsection (3), paragraph (e), by inserting the words "within ten (10) working days" after the words "shall be provided to the applicant" at the end of the first sentence.

The committee adjourned at 11:35 a.m., November 22, 1989.

INTERIM JOINT COMMITTEE ON HEALTH & WELFARE Meeting of November 29, 1989

The Interim Joint Committee on Health and Welfare met on Wednesday, November 29, 1989, and submits this report.

The Committee determined that the following regulation complied with KRS Chapter 13A:

902 KAR 2:011

The Committee took no action on the following regulations:

902 KAR 2:020
902 KAR 2:040
902 KAR 2:060
902 KAR 2:080
902 KAR 2:090
902 KAR 4:100
908 KAR 3:060
908 KAR 3:150

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE Meeting of November 30, 1989

The Interim Joint Committee on Appropriations and Revenue met on November 30, 1989 and took no action on the following regulation:

103 KAR 43:310, promulgated by the Revenue Cabinet.

INTERIM JOINT COMMITTEE ON LABOR & INDUSTRY Meeting of December 15, 1989

The Interim Joint Committee on Labor and Industry met on Friday, December 15, 1989, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A: 803 KAR 2:031, 2:300, 2:301, 2:302, 2:303, 2:304, 2:305, 2:306, 2:307, 2:308, 2:309, 2:310, 2:311, 2:312, 2:313, 2:314, 2:315, 2:316, 2:317, 2:318, 2:319, 2:320, 2:400, 2:401, 2:402, 2:403, 2:404, 2:405, 2:406, 2:407, 2:408, 2:409, 2:410, 2:411, 2:412, 2:413, 2:414, 2:415, 2:416, 2:417, 2:418, 2:419, 2:420, 2:421, 2:422, 2:423, 2:500, and 2:600.

The Committee adjourned at 10:50 a.m.

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LOCATOR INDEX -- EFFECTIVE DATES

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

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704 KAR 20:550	2465	

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101 KAR 3:010E	1126	11-13-89
200 KAR 16:020E	1321	11-28-89
200 KAR 16:030E	1322	11-28-89
200 KAR 16:040E	1323	11-28-89
200 KAR 16:050E	1324	11-28-89
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200 KAR 17:010E	116	6-15-89
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201 KAR 10:010E	1131	10-31-89
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201 KAR 10:060E	1134	10-31-89
201 KAR 20:310E	1328	11-20-89
301 KAR 2:044E	531	8-21-89
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301 KAR 2:220E	1134	10-13-89
405 KAR 8:010E	321	8-10-89
Replaced	1343	11-22-89
405 KAR 10:200E	732	9-27-89
501 KAR 6:020E	532	8-21-89
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501 KAR 6:050E	1329	11-17-89
501 KAR 6:140E	1330	11-17-89
502 KAR 45:010E	119	6-28-89
Replaced	536	9-19-89
502 KAR 45:125E	119	6-28-89
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702 KAR 5:010E	334	7-17-89
Replaced	538	10-8-89
702 KAR 5:030E	334	7-17-89
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702 KAR 5:080E	335	7-17-89
Replaced	200	10-8-89
702 KAR 7:065E	1332	11-17-89
705 KAR 5:130E	338	8-9-89
709 KAR 1:060E	340	8-9-89
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902 KAR 20:280E	120	6-22-89
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903 KAR 5:270E	124	6-22-89
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904 KAR 2:006E	124	7-14-89
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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
904 KAR 3:020E	1332	12-1-89
907 KAR 1:004E	127	7-14-89
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907 KAR 1:012E	135	7-14-89
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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
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907 KAR 1:027E	142	7-14-89
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Replaced	270	9-20-89
907 KAR 1:036E	146	7-14-89
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907 KAR 1:045E	153	7-14-89
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907 KAR 1:055E	154	7-14-89
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1 KAR 4:005		
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101 KAR 3:040		
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200 KAR 5:020	500	
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200 KAR 16:020	1518	
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201 KAR 2:120		
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201 KAR 2:121	674	12-6-89
201 KAR 2:125		
Repealed	674	12-6-89
201 KAR 2:130		
Repealed	92	9-2-89
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201 KAR 2:135		
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502 KAR 45:125	286	9-19-89
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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
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602 KAR 20:110 Amended	447	11-4-89
602 KAR 20:120	514	11-4-89
603 KAR 5:050 Amended	862	
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603 KAR 5:070 Amended	863	
Amended	1376	
603 KAR 5:077 Amended	1247	
603 KAR 5:110 Amended	192	10-4-89
603 KAR 5:150 Amended	1413	
603 KAR 5:230 Amended	448	11-4-89
701 KAR 5:060 Amended	652	Died*
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702 KAR 1:115 Amended	195	
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702 KAR 3:135 Amended	1251	
702 KAR 4:050 Amended	52	9-2-89
Amended	655	12-6-89
702 KAR 4:110	98	
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702 KAR 5:010 Amended	197	
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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	
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702 KAR 7:065 Amended	1255	
702 KAR 7:070 Amended	1256	
704 KAR 3:005 Amended	1257	
704 KAR 3:290 Repealed	288	10-8-89
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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
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704 KAR 10:022 Amended	206	10-8-89
704 KAR 20:005 Amended	207	10-8-89
Amended	658	12-6-89
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	12-6-89
704 KAR 20:130 Amended	661	12-6-89
704 KAR 20:135 Amended	210	10-8-89
704 KAR 20:290 Amended	211	10-8-89
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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	
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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
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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	
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709 KAR 1:110	297	
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709 KAR 1:120	298	10-8-89
709 KAR 1:130	299	10-8-89
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801 KAR 1:005		
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801 KAR 1:010		
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801 KAR 1:020		
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801 KAR 1:030		
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801 KAR 1:040		
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801 KAR 1:050		
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801 KAR 1:060		
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801 KAR 1:100		
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803 KAR 2:020		
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803 KAR 2:300	682	12-15-89
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803 KAR 2:423	1106	12-15-89
803 KAR 2:500	720	12-15-89
803 KAR 2:600	721	12-15-89
803 KAR 25:090		
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803 KAR 25:100		
Amended	31	
As Amended	749	10-27-89
804 KAR 9:010		
Amended	488	
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806 KAR 14:120	100	Died*
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806 KAR 14:121	516	11-4-89
807 KAR 5:022		
Amended	1414	
807 KAR 5:026		
Amended	1460	
807 KAR 5:027		
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807 KAR 5:031		
Amended	1467	
807 KAR 5:041		
Amended	1469	
807 KAR 5:054		
Amended	1478	
807 KAR 5:061		
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808 KAR 10:040		
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808 KAR 10:210		
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815 KAR 7:010		
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815 KAR 15:040		
Amended	67	8-22-89
815 KAR 15:085	104	
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815 KAR 20:070		
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815 KAR 20:090		
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815 KAR 20:110		
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815 KAR 20:120		
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815 KAR 20:130		
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815 KAR 25:010		
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815 KAR 45:040		
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900 KAR 2:010		
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900 KAR 2:020		
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Amended	918	
900 KAR 2:040		
Amended	924	
901 KAR 5:031		
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901 KAR 5:040		
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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 2:010		
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902 KAR 2:011	722	11-29-89
902 KAR 2:020		
Amended	663	
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902 KAR 2:040		
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902 KAR 20:021		
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902 KAR 20:101		
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902 KAR 20:280	302	
Amended	554	
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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
903 KAR 5:150		
Amended	496	10-27-89
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Repealed	519	10-27-89
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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		
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904 KAR 2:016		
Amended	1033	
904 KAR 2:022		
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904 KAR 2:025	1106	
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Amended	243	9-20-89
904 KAR 2:046		
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904 KAR 2:055		
Amended	1039	
904 KAR 2:060		
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904 KAR 2:116		
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904 KAR 3:020		
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904 KAR 3:080		
Amended	246	9-20-89
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905 KAR 1:065		
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905 KAR 1:071		
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905 KAR 1:110		
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905 KAR 1:120		
Amended	1063	
905 KAR 1:140		
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905 KAR 2:070	105	
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905 KAR 6:010		
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905 KAR 6:020		
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905 KAR 6:030		
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905 KAR 6:040	306	
As Amended	551	9-20-89
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907 KAR 1:004		
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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
Amended	1511	
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	
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907 KAR 1:055		
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907 KAR 1:402		
Amended	283	9-20-89
907 KAR 1:404		
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907 KAR 1:414		
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907 KAR 1:416		
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907 KAR 1:432		
Amended	87	8-16-89
907 KAR 1:436		
Amended	1514	
907 KAR 1:450	311	
As Amended	551	9-20-89
907 KAR 1:460		
Amended	1515	
907 KAR 1:474	313	9-20-89
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